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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES E. OWENS,
Plaintiff

v.

PAT YARGER,
Defendant

CIVIL NO. 3:CV-01-2283

(CHIEF JUDGE VANASKIE)

FILED
SCRANTON

MAR 18 2002

PER km
DEPUTY CLERK

MEMORANDUM AND ORDER

James E. Owens, a prisoner confined at the State Correctional Institution at Huntingdon, Pennsylvania (SCI-Huntingdon), initiated this civil rights action by filing a Complaint pursuant to 42 U.S.C. § 1983 on November 30, 2001. (Dkt. Entry #1). The Complaint alleges that the Plaintiff received negligent medical treatment at SCI-Huntingdon. For the reasons that follow, the Court will dismiss the Plaintiff's Complaint, *sua sponte*, as frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

A. Background

The Plaintiff alleges that on June 26, 2001, he was transported to the State Correctional Institution at Smithfield (SCI-Smithfield) and treated for "an infection and kidney stones" which were not diagnosed by the Medical Department at SCI-Huntingdon. Although the allegations in the Complaint are unclear, it appears that the Plaintiff is claiming that he was first seen by the Medical Department at SCI-Huntingdon on June 26, 2001, "after being in

excruciating pain,"and then transferred to SCI-Smithfield for treatment.¹ (Complaint, Dkt. Entry #1, p. 2). He further alleges that on August 6, 2001, he had surgery and returned to SCI-Huntingdon on August 14, 2001. The Plaintiff states that: "[a]t no time after Plaintiff returned from the hospital where he had major surgery did the Medical Dept. call Plaintiff down to the infirmary to check to see if the Plaintiff was having any complications as a result of major surgery." (Complaint, Dkt. Entry #1, p. 2).

Named as the sole Defendant is Pat Yarger, who the Plaintiff identifies as the "head" of the Medical Department at SCI-Huntingdon. (Complaint, Dkt. Entry #1, p. 2). The Plaintiff seeks a declaratory judgment, compensatory damages and punitive damages for what he describes as "negligent and incompetent behavior" on the part of the SCI-Huntingdon medical staff. (Complaint, Dkt. Entry #1, p.3).

B. Analysis

The Plaintiff is seeking to redress what he purports to be a violation of his constitutional rights though 42 U.S.C. § 1983.² "To state a claim under § 1983, a plaintiff must

¹In what appears to be an unrelated allegation, the Plaintiff states that he was diagnosed as having three hernias by a Dr. Kimber at SCI-Huntingdon "for which [he] was to receive treatment." (Complaint, Dkt. Entry #1, p. 2). Although not totally clear, the Plaintiff appears to be alleging that his kidney stones were mis-diagnosed as hernias.

²Section 1983 reads, in relevant part, as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person

allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). The Plaintiff alleges that his constitutional rights were violated by the "negligent and incompetent behavior" of the medical personnel at SCI-Huntingdon.

In *Rouse v. Plantier*, 182 F.3d 192 (3d Cir.1999), the Court of Appeals for the Third Circuit set forth the standard necessary to establish a claim for deliberate indifference to a prisoner's medical needs. The Court stated:

The Eighth Amendment prohibits the imposition of unnecessary and wanton infliction of pain contrary to contemporary standards of decency. In *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), the Supreme Court held that the Eighth Amendment's prohibition against cruel and unusual punishment requires prison officials to provide basic medical treatment to those whom it has incarcerated. The Court articulated the standard to be used: In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment. *Id.* at 106, 97 S.Ct. 285. Therefore, to succeed under these principles, plaintiffs must demonstrate (1) that the defendants were deliberately indifferent to their medical needs and (2) that those needs were serious.... It is well-settled that claims of negligence or

within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

medical malpractice, without some more culpable state of mind, do not constitute "deliberate indifference." As the *Estelle* Court noted: "[I]n the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.'" *Id.* at 105, 97 S.Ct. 285... Deliberate indifference, therefore, requires obduracy and wantonness . . . which has been likened to conduct that includes recklessness or a conscious disregard of a serious risk. . . .

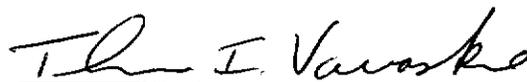
Id. at 197 (some internal citations and quotations omitted).

Here, the Plaintiff is basing his constitutional claim on the alleged receipt of negligent treatment. However, "the law is clear that simple medical malpractice is insufficient to present a constitutional violation." *White v. Napoleon*, 897 F.2d 103, 110 (3d Cir.1990). Accordingly, the Plaintiff's § 1983 claim is frivolous.

Moreover, the Plaintiff fails to allege any personal involvement on the part of the only named Defendant, Pat Yarger. The Plaintiff does not allege that the Defendant participated in his medical care. Furthermore, the Plaintiff does not even allege that the Defendant was aware of his medical condition and his medical treatment. "It is, of course, well established that a defendant in a civil rights case cannot be held responsible for a constitutional violation which he or she neither participated in or approved... There is no vicarious, respondeat superior liability under § 1983." *C.H. ex. rel. Z.H. v. Oliva*, 226 F.3d 198, 201-202 (3rd Cir. 2000), *cert. denied sub nom. Hood v. Medford Twp. Bd. of Educ.*, 533 U.S. 915 (2001).

Title 28 United States Code section 1915A states, in part: "The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. . . . On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. §1915A(b)(1). In *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827 (1989), the Supreme Court stated that a complaint is frivolous "where it lacks an arguable basis either in law or fact." 490 U.S. at 325. Since the Plaintiff's Complaint "lacks an arguable basis either in law or fact," it will be dismissed as frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

An appropriate Order is attached.



Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania

March 18, 2002

