

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD R. SALTER,	:	CIVIL ACTION NO. 3:CV-11-1259
	:	
Plaintiff	:	(Judge Nealon)
	:	
v.	:	
	:	
MARIROSA LAMAS, Superintendent, <u>et al.</u> ,	:	
	:	
Defendants	:	

**FILED
SCRANTON
JUL 13 2011**

PER _____
DEPUTY CLERK

MEMORANDUM AND ORDER

Edward R. Salter, an inmate currently confined in the Rockview State Correctional Facility ("SCI-Rockview"), Bellefonte, Pennsylvania, filed this pro se civil rights action pursuant to 42 U.S.C. §1983. The named Defendants are the following SCI-Rockview employees: Marirosa Lamas, Superintendent; Robert Marsh, Deputy Superintendent; Jeffrey Rackovan, Grievance Coordinator; Diane Beatty, Principal; Sharon Clark, Unit Counselor; and Craig Harpster, Unit Manager. Along with his complaint, Salter submitted an application to proceed in forma pauperis under 28 U.S.C. § 1915.

The Prison Litigation Reform Act (the "Act"), Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996), authorizes a district court to dismiss an action brought by a prisoner under 28 U.S.C. § 1915¹

1. Section 1915(e)(2) of Title 28 of the United States Code provides:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

if the complaint is frivolous. Moreover, 28 U.S.C. § 1915A requires a district court to screen any complaint brought by a prisoner who seeks relief from a government employee for purposes of determining whether, inter alia, the complaint fails to present a viable cause of action. This initial screening is to be done as soon as practicable and need not await service of process. 28 U.S.C. § 1915A(a). Here, the Court has conducted an initial screening of Plaintiff's complaint, and for the reasons set forth below, Plaintiff's motion to proceed in forma pauperis will be granted for the sole purpose of filing the instant action, and the complaint will be dismissed as frivolous.

Factual Allegations

Plaintiff states that on May 11, 2011, when he reported for work at approximately 9:00 am, he was "wrongfully dismissed from his job in the library working the copier." (Doc. 1, complaint). He claims that in talking with Defendant Beatty, he learned that she received an email from Defendant Marsh, "who informed [Beatty] that the Plaintiff was a security risk." Id. Later that same day, on his way to mess hall, Plaintiff spoke with Defendant Marsh concerning his job and learned that he and another inmate had been dismissed from their jobs in the library. Id. When Plaintiff inquired as to the reason, Defendant Marsh stated that he "did not like the way that the copier was being operated" and further stated that he "could remove anyone from their job with out explanation." Id.

On June 10, 2011, Plaintiff states that he was in Defendant Clark's office concerning his job and was informed that he was "placed in the phantom vocational culinary, to which they are receiving government funds, [but] there is no such program, only the title". Id. Thus, Plaintiff complains that "once again [his] job was changed without any kind of notice or hearing to justify removal." Id. Plaintiff claims that Defendant Clark "arrogantly scolded Plaintiff for complaining to

officials about his job and the manner that he as removed.” *Id.* The Plaintiff states that he “tried to explain to this Defendant who became belligerent stating that she would not do anything to help the Plaintiff nor will he ever receive any support for anything.” *Id.*

Plaintiff filed the instant action in which he claims that “Defendants Beatty and Marsh failed to present any reasonable basis for believing the Plaintiff’s conduct or work ethics posed a security risk/problem within the library.” *Id.* Moreover, Plaintiff claims that Defendants failed to provide Plaintiff with a hearing prior to removing Plaintiff from his job. *Id.* For relief, Plaintiff seeks reinstatement of his job with back pay, as well as punitive damages. *Id.*

Discussion

The Fourteenth Amendment of the United States Constitution provides in pertinent part: “No State shall . . . deprive any person of life, liberty, or property, without due process of law” The Supreme Court has mandated a two-part analysis of a procedural due process claim: first, “whether the asserted individual interests are encompassed within the . . . protection of ‘life, liberty or property;’ second, if protected interests are implicated, we then must decide what procedures constitute ‘due process of law.’” *Ingraham v. Wright*, 430 U.S. 651, 672 (1977). If there is no protected liberty or property interest, it is obviously unnecessary to analyze what procedures were followed when an alleged deprivation of an interest occurred.

It is well-settled that an inmate does not have a protected liberty or property interest in continued prison employment. *James v. Quinlan*, 866 F.2d 627, 629-30 (3d Cir.), *cert. denied*, 493 U.S. 870 (1989); *Bryan v. Werner*, 516 F.2d 233, 240 (3d Cir. 1975). The right to earn wages while incarcerated is a privilege, not a constitutionally guaranteed right. However, until recently a state or federal law or regulation could create such an interest. *Hewitt v. Helms*, 459 U.S. 460, 466, 469-72

(1983) (holding that a liberty interest may arise from state laws or regulations about the treatment of prisoners if such laws or regulations contain words of a mandatory nature which restrict prison officials' discretion). The Hewitt methodology was rejected in Sandin vs. Conner, 515 U.S. 472 (1995). In Sandin, the Court held that while under certain circumstances states may create liberty interests protected by the Due Process Clause,

these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . , nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

Id. at 484 (citations omitted). Furthermore, although Sandin "did not instruct on the correct methodology for determining when prison regulations create a protected property interest[,] as opposed to a liberty interest, the "law is well established . . . that an inmate's expectation of keeping a specific prison job, or any job, does not implicate a protected property interest." Bulger v. United States Bureau of Prisons, 65 F.3d 48, 50 (5th Cir. 1995). See also Coakley v. Murphy, 884 F.2d 1218, 1221 (9th Cir. 1989) (holding inmates have no property interest in continuing in work-release program); Flittie v. Solem, 827 F.2d 276, 279 (8th Cir. 1987) (holding inmates have no constitutional right to be assigned a particular job); Ingram v. Papalija, 804 F.2d 595, 596 (10th Cir. 1986) (finding Constitution does not create a property interest in prison employment); Adams v. James, 784 F.2d 1077, 1079 (11th Cir. 1986) (assigning inmate as law clerk does not invest him with a property interest in continuation as such); Gibson v. McEvers, 631 F.2d 95, 98 (7th Cir. 1980) (finding inmate's expectation of keeping job does not amount to a property interest subject to due process protections); Bryan, 516 F.2d at 240 (same).

In so far as Plaintiff seeks to recover for lost wages, no inmate has a cause of action under §

1983 for reduced prison wages. Gahagan v. Pennsylvania Bd. of Probation & Parole, 444 F. Supp. 1326, 1330-31 (E.D. Pa. 1978). To the extent that Plaintiff argues that Defendant Lamas failed to "adequately ensure the policies and procedures were followed, specifically, that Defendants failed to abide by DC-ADM 816, which Plaintiff states "requires a hearing with the Unit Support Team within thirty (30) days from the removal of a job" and if "this hearing doesn't take place with thirty (30) days, to resolve the reason for the job removal, the inmate is supposed to be automatically reinstated to his job position and receive back pay for any days missed", the Court notes that DC-ADM 816 makes no mention of a hearing provided to inmates removed from employment. See Pa. Dept. of Corr. Policy Number 816 at <http://www.portal.state.pa.us>. In fact, DC-ADM 816 states that the "policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual." Id. As such, the Court finds that Salter has not been deprived of any state-created liberty interest.

Accordingly, because Plaintiff's complaint is "based on an indisputably meritless legal theory" it will be dismissed, without prejudice, as legally frivolous. Wilson v. Rackmill, 878 F.2d 772, 774 (3d Cir. 1989).

Under the circumstances, the Court is confident that service of process is not only unwarranted, but would waste the increasingly scarce judicial resources that § 1915(d) is designed to preserve. See Roman v. Jeffes, 904 F.2d 192, 195 n.3 (3d Cir. 1990). An appropriate Order accompanies this Memorandum Opinion.

Dated: July 14, 2011



United States District Judge

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Plaintiff	:	(Judge Nealon)
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v.	:	
	:	
MARIROSA LAMAS, Superintendent, <u>et al.</u> ,	:	
	:	
Defendants	:	

ORDER

AND NOW, THIS 14th DAY OF JULY, 2011, for the reasons set forth in the accompanying

Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's motion to proceed in forma pauperis (Doc. 2), is **GRANTED** only for the purpose of filing the complaint.
2. The complaint is **DISMISSED** without prejudice under 28 U.S.C. § 1915(e)(2)(B)(I).
3. The Clerk of Court is directed to **CLOSE** this case.
4. Any appeal from this order will be deemed frivolous, not taken in good faith and lacking probable cause.


United States District Judge