

The Plaintiff states that his legal claims are as follows:

1. Fourth Amendment violation alleging an "unjustifiable placement in the [Diversionary Treatment Unit, hereinafter "DTU"] DTU." Plaintiff's Complaint pg. 11.
2. Eighth Amendment violation alleging that because of this "unlawful and unjustified placement into the DTU," that he was subjected to constant noise and unbearable pungent smell of feces and urine daily. Thus, creating cruel and unusual punishment. *Id.* at 11-12.
3. Fourteenth Amendment violation alleging a violation of the Due Process Clause because of his placement into the DTU and not affording him "due process" to appeal it. *Id.* at 12-13.
4. Rehabilitation Act alleging that the Defendants violated this Act "by subjecting him to a DTU when neither his behavior warranted such placement, nor did he fit the criteria for such placement." *Id.* at 13.
5. Professional Liability alleging that certain Defendant's named herein are professionals and therefore liable to the Plaintiff for failure to object to the Plaintiff's placement into the DTU. *Id.*

6. Emotional Harm alleging that the Plaintiff as suffered harm because of the violations herein alleged. *Id.*

7. Mental Harm alleging that the Plaintiff has suffered harm because of the violations herein alleged. *Id.*

8. Conspiracy alleging that "through their acts, omissions, and/or willful blindness...Defendants have conspired to violate the Plaintiff's Constitutional rights; and using the DOC's policies and procedures to systematically conceal these violations." *Id.* at 13-14.

The Plaintiff also Petitions the Court for the following:

The Plaintiff asks this Court to grant a "declaration that the acts, omissions, and/or willful blindness described herein violate his rights under the Constitution and Law of the United States." *Id.* at 14. Also, the Plaintiff asks this Court to grant a "preliminary and a permanent injunction ordering all of the herein named Defendants to cease their employment of the DTU...". *Id.* Further, the Plaintiff asks this Court to grant punitive damages in the amount of \$1,000,000.00, and a compensatory damages in the amount of \$250,000.00. Lastly, he asks for reimbursement for all costs of this suit and any other relief this Court deems proper, just and/or equitable.

DISCUSSION

The Plaintiff is essentially petitioning this Court regarding the Department of Corrections (hereinafter "DOC") placement of the Plaintiff into the DTU at SCI Greene.

The Plaintiff attached several grievance and other documents to his Complaint. Thus, showing that the Plaintiff followed the grievance procedures of SCI-Greene but was unsuccessful.

One document, dated July 12, 2016, states that the inmate is "awaiting bed space in general population." A second document, dated July 26, 2016, states that the "inmate has requested self-confinement." Further, there are several other documents that aver misconduct, also documents that allege the DOC fabricated the misconducts, and documents requesting a transfer from SCI Greene.

This Court finds that the placement onto various *housing units* within the DOC is a policy procedure of the DOC and as such the Plaintiff does not aver a viable cause of action to this Court.

The Court is obligated to read *pro se* Plaintiff's allegations liberally and apply a less stringent standard to the pleadings of a *pro se* Plaintiff than to a complaint drafted by counsel. *Hishon v. King*, 467 U.S. 69 (1984). A

complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show that the plaintiff is not entitled to relief. *Jones v. Brock*, 549 U.S. 199, 215 (2007).

Upon review of the Plaintiff's complaint, this Court finds that the Complaint shall be dismissed, in its entirety, for failure to state a claim upon which relief can be granted.

Section 6602(e)(2) of the PLRA establishes that the court shall dismiss prison conditions litigation at any time if it determines that the litigation fails to state a claim upon which relief may be granted. 42 Pa.C.S. §6602(e)(2). Prison litigation is defined as a civil proceeding arising in whole or in part under Federal or State law with respect to the conditions of confinement or the effects of actions by a government party on the life of an individual confined in prison. 42 Pa.C.S. § 6601.

The basis of the Plaintiff's argument is that the DOC has improperly placed him in the DTU. The complaint therefore challenges the medical diagnosis or determination of mental health/intellectual disability housing at the prison and thus squarely fitting the definition of prison condition litigation.

THIRTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA

This Court finds that the particular housing unit an inmate is determined to be best housed is a DOC procedure. Further, the Defendants were acting within the scope of their duties when determining the appropriate housing unit for each particular inmate on an individual basis. Therefore, sovereign immunity applies. Lastly, we find that none of the recognized exceptions to the Sovereign Immunity Act apply to the facts averred by the Plaintiff.

CONCLUSION

After review of the record and for the aforementioned reasons herein, this Court hereby **DENIES** the Plaintiff's Petition to Proceed *In Forma Pauperis*, and **DISMISSES** this matter in its entirety.

SO ORDERED AND DECREED

ATTEST:

BY THE COURT:

Susan A White
PROTHONOTARY

Farley Toothman
FARLEY TOOTHMAN, PRESIDENT JUDGE

Date: 10-26-16