



Cir. 1989).<sup>1</sup> "The frivolousness determination is a discretionary one," and trial courts "are in the best position" to determine when an indigent litigant's complaint is appropriate for summary dismissal. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1734 (1992).

The plaintiff is Howard Antonio Watson, an inmate presently confined at the State Correctional Institution, Coal Township, Pennsylvania. Plaintiff names as sole defendant Dr. Singh, whom is identified as a physician at Watson's former place of confinement, the State Correctional Institution, Camp Hill, Pennsylvania. His complaint asserts that on November 26, 1993, the defendant "prescribed [him] faulty medications to attempt to heal five (5) blisters in [his] mouth...." Document 1, ¶ IV of the record. However, the medication, "disoriented [his] inner organs severely with acute pains affecting [his] esophagus tube and stomach." Id. He further contends that he has been diagnosed with achalasia<sup>2</sup> and hiatus hernia of the stomach and blames these conditions on the "faulty medication" that the defendant prescribed. Id.

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1. Indisputably meritless legal theories are those "in which it is either readily apparent that the plaintiff's complaint lacks an arguable basis in law or that the defendants are clearly entitled to immunity from suit." Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990) (quoting Sultenfuss v. Snow, 894 F.2d 1277, 1278 (11th Cir. 1990)). Clearly baseless factual contentions describe scenarios "clearly removed from reality." Id.

2. Achalasia is a failure to relax which causes the upper esophagus to become dilated and filled with retained food.

Claims based upon the Cruel and Unusual Punishments Clause have both objective and subjective components. Wilson v. Seiter, 501 U.S. 294, 298 (1991). Serious hardship to the prisoner is required to satisfy the Eighth Amendment's objective component. Id. The subjective component is met if the person or persons causing the deprivation acted with "a sufficiently culpable state of mind". Id.

In the context of medical care, the relevant inquiry is whether defendants were: (1) deliberately indifferent (the subjective element) to (2) plaintiff's serious medical needs (the objective element). Monmouth County Correctional Institution Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987); West v. Keve, 571 F.2d 158, 161 (3d Cir. 1979). Because only flagrantly egregious acts or omissions can violate this standard, mere medical malpractice can not result in an Eighth Amendment violation, nor can disagreements over a prison physician's medical judgment. White v. Napoleon, 897 F.2d 103, 108-10 (3d Cir. 1990). Furthermore, a complaint that a physician or a medical department "has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment...." Estelle v. Gamble, 429 U.S. 97, 106 (1976).

Assuming without deciding, that Watson's medical needs were serious in the constitutional sense, the allegations in the complaint amount to nothing more than Watson's subjective disagreement with the treatment decisions and medical judgment of

the defendant. At most the conclusory allegations in the complaint only rise to the level of mere negligence. As simple negligence can not serve as a predicate to liability under § 1983, Hudson v. Palmer, 468 U.S. 517 (1984), Watson's civil rights complaint fails to articulate an arguable claim under § 1983. See White v. Napoleon, 897 F.2d at 108-110.

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).<sup>3</sup>

AND NOW, THEREFORE, THIS *J4<sup>th</sup>* DAY OF OCTOBER, 1995,

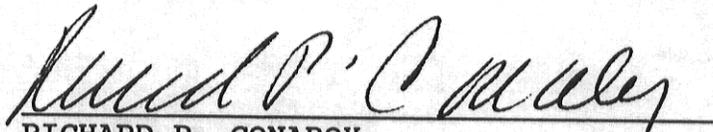
IT IS HEREBY ORDERED THAT:

1. Plaintiff is granted temporary leave to proceed in forma pauperis.
2. The plaintiff's complaint is dismissed without prejudice as legally frivolous pursuant to 28 U.S.C. § 1915(d).
3. The Clerk of Court is directed to close this case.
4. Any appeal from this order will be deemed

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3. Watson previously filed a § 1983 complaint against Dr. Singh based on similar allegations. No. 3:CV-95-1160. That complaint was also dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(d) by order of July 26, 1995.

frivolous, without probable cause and not  
taken in good faith.

  
RICHARD P. CONABOY  
United States District Judge

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DEPUTY CLERK