

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

RONALD D. WEAVER

Plaintiff

v.

PHARNCHEM LABORATORIES, INC.,  
DOCTOR REINERS, E. B. MORRISON,  
R. NORRIS, FREDERICK FRANK, G. LEVY,  
and J. GRACE

Defendants

CIVIL ACTION NO.

1:CV-99-352

Judge Kane

FILED  
HARRISBURG PA

MAY 31 2000

MARY E. D'ANDREA CLERK  
Per 318 Deputy Clerk

MEMORANDUM AND ORDER

Before the Court are Motions to Dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) by each of the Defendants. The motions have been briefed and are now ripe for disposition. For the reasons stated herein, the motions will be granted.

**I. BACKGROUND**

Plaintiff is an inmate at the State Correctional Institution at Huntingdon (hereinafter "SCI-Huntingdon") and is representing himself. On March 5, 1999, Plaintiff filed a complaint seeking declaratory and injunctive relief as well as monetary damages pursuant to 42 U.S.C. §§ 1983 and 1986,<sup>1</sup> for alleged violations of his rights under the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. On April 12, 1999, Plaintiff

<sup>1</sup> A § 1986 claim requires an allegation that a defendant had knowledge of wrongs conspired to be done under 42 U.S.C. § 1985. The complaint, however, fails to allege any violation of § 1985. Accordingly, Plaintiff cannot maintain a cause of action under § 1986. See *Rogers v. Mount Union Borough by Zook*, 816 F. Supp. 308, 314 (M.D. Pa. 1993).

Certified from the record

Date 5/30/00

Mary E. D'Andrea, Clerk

Per George D. Fardna

Deputy Clerk

filed an amended complaint, adding one additional defendant. Plaintiff's Motion for a Temporary Restraining Order was denied on April 20, 1999.

The facts alleged by Plaintiff are as follows. On January 8 or 11, 1999, Plaintiff provided a urine sample which, when tested by Defendant PharmChem Laboratories, indicated the presence of amphetamines. Plaintiff alleges that correction officials failed to make note of the prescription drugs that Plaintiff was taking.<sup>2</sup> The specimen was retested and again indicated the presence of illegal drugs in Plaintiff's system. On the basis of these positive test results, Plaintiff on January 15, 1999 received a "misconduct," charging him with use of a dangerous or controlled substance. A disciplinary hearing was held January 19-21, 1999, at which Plaintiff was found to have possessed or used a dangerous or controlled substance. As a consequence, he was segregated from the general prison population for 60 days. Following the drug test and hearing, Plaintiff alleges he was "coerced into being taken off his medication." Amend. Compl. ¶ 5.

In his Complaint, Plaintiff challenges the seizure of his urine, the misconduct issued, the disciplinary hearing, his confinement in segregation, denial of a truth determining process, denial of unobstructed medical treatment, denial of exercise, and defendants' pattern of conduct. *See* Amend. Compl. ¶ 2.

## II. DISCUSSION

Dismissal pursuant to Rule 12(b)(6) is proper when "taking the allegations of the complaint as true, and viewing them liberally, giving plaintiff the benefit of all inferences which fairly may be drawn therefrom, 'it appears beyond doubt that the plaintiff can prove no

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<sup>2</sup> The drugs Plaintiff claims he was taking and that allegedly resulted in the false positive are ecotrin, cimetidine, and ranitidine. Each is available without a prescription.

set of facts in support of his claim which would entitle him to relief.” *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 444 (3d Cir. 1977), *cert. denied*, 434 U.S. 1086 (1978) (internal citations omitted).

A. Claims against Defendant PharmChem

To state a viable claim under § 1983, the following elements are required: (1) the conduct complained of was committed by a person acting under color of state law; and (2) this conduct deprived Plaintiff of a federally protected right. *See* 42 U.S.C. § 1983. No claim against Defendant PharmChem has been stated because Plaintiff does not allege that PharmChem was acting other than as an private contractor for the Department of Corrections. The Court of Appeals for the Third Circuit has stated,

It is clear from *Rendell-Baker* [*v. Kohn*, 457 U.S. 830 (1982),] that a state contractor and its employees are not state actors simply because they are carrying out a state sponsored program and the contractor is being compensated therefor by the state. Nor does the fact that the activity being performed is a public function render the contractor and its employees state actors. For the nature of the contractor's activity to make a difference, the function performed must have been "traditionally the *exclusive* prerogative of the State."

*Black v. Indiana Area Sch. Dist.*, 985 F.2d 707, 710 (3d Cir. 1992) (quoting *Rendell-Baker*, 457 U.S. at 842) (emphasis added). Drug testing cannot fairly be said to have been traditionally the *exclusive* province of the state, thus PharmChem's private conduct is not thereby transformed into state action. *See Nygren v. Predovich*, 637 F. Supp. 1083, 1088 (D. Colo. 1986). For this reason, Plaintiff has failed to state a viable § 1983 claim against PharmChem and the action against this Defendant will be dismissed.

B. Claims against Other Defendants

Against the remaining Defendants, Plaintiff alleges violations of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution. The Court addresses each seriatim.

1. *Fourth Amendment Claim*

Plaintiff argues that, because there was not probable cause to suspect he was using illegal drugs, the seizure of his urine violated the Fourth Amendment to the Constitution. Such a claim cannot succeed, however, because prison officials need neither probable cause nor reasonable suspicion to subject inmates to searches, including urinalysis. *See Bell v. Wolfish*, 441 U.S. 520, 560 (1979). Still, the search "must be conducted in a reasonable manner." *Id.* None of the allegations in the complaint support the conclusion that the urinalysis was unreasonable given the circumstances. In determining whether a search of a prisoner is reasonable, the court must "[balance] the significant and legitimate security interests of the institution against the privacy interests of the [prisoner]," *id.*, and give prison administrators "wide-ranging deference in [their] adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Id.* at 547.

To be sure, the unauthorized use of narcotics by inmates poses a serious threat to prison officials' ability to maintain institutional security. *Cf. Block v. Rutherford*, 468 U.S. 576, 588-89 (1984) (indicating the unauthorized use of narcotics is a problem in many penal and detention centers). Weighing this interest in prison security against Plaintiff's privacy interests, the Court cannot conclude that the urinalysis Plaintiff alleges was unreasonable.

Similarly, as to the manner in which the sample was gathered, according to Plaintiff's own allegations, his urine was collected at the designated "urine collection site" by SCI-Huntingdon's "Urinalysis Collection Officer," who is "responsible for ensuring the proper collection, safety, storage and transportation of urine specimens." See Amend. Compl. at ¶¶ 7, 28. The Court is unable to conclude that collection in this manner is constitutionally unreasonable. Cf. *Schmerber v. California*, 384 U.S. 757, 771-72 (1966). Accordingly, there can be no Fourth Amendment violation on the facts alleged here.

2. *Fifth Amendment Claim*

The Supreme Court has held that facts disclosed by a blood sample tested for alcohol content are not "testimonial" and therefore do not implicate the Fifth Amendment privilege against self-incrimination. See *Schmerber*, 384 U.S. at 761. Just as blood samples are not testimonial evidence, neither are urine samples tested for drugs. See *Lucero v. Gunter*, 17 F.3d 1347, 1350 (10<sup>th</sup> Cir. 1994). Therefore, Plaintiff's claim that his Fifth Amendment rights were violated cannot succeed.

3. *Sixth Amendment Claim*

Plaintiff also invokes the Sixth Amendment right to confront witnesses as a basis for his § 1983 claims. Because, however, inmates have no right to confront and cross-examine witnesses at disciplinary proceedings, this claim, too, fails. See *Baxter v. Palmigiano*, 425 U.S. 308, 322-23 (1976); *Wolff v. McDonnell*, 418 U.S. 539, 567-69 (1974).

4. *Eighth Amendment Claim*

In order to state a claim for cruel and unusual punishment in violation of the Eighth Amendment, an inmate must allege a sufficiently serious deprivation and a sufficiently culpable state of mind. See *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). Plaintiff's Eighth

Amendment claim is comprised of allegations that, as a result of the misconduct he received, his heart condition was aggravated, it was difficult for him to sleep due to excessive noise and heat in his new quarters, he was forced to breathe second-hand smoke, he was denied yard time, and he was forced to refuse medication for fear of being charged with another drug-related misconduct. Even if these were deprivations of constitutional proportions, Plaintiff does not allege the other essential element: that any Defendant acted with the requisite state of mind, that is, that Defendants knew or should have know of Plaintiff's situation or that Defendants took any affirmative steps in subjecting Plaintiff to the allegedly cruel conditions. Therefore, Plaintiff has failed to plead a viable Eighth Amendment violation.

5. ***Fourteenth Amendment Claims***

Plaintiff alleges that his Fourteenth Amendment rights were violated, but does not indicate whether the rights to which he is referring are procedural due process, substantive due process, and/or equal protection rights. We address each potentially applicable theory under the Fourteenth Amendment.

a. Procedural Due Process

The Fourteenth Amendment states in pertinent part: "nor shall any state deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. This provision protects individuals against arbitrary government action. *See Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). To establish that the state has violated an individual's right to procedural due process, a petitioner must (1) demonstrate the existence of a protected interest in life, liberty, or property that has been interfered with by the state, and (2) establish that the procedures attendant upon that deprivation were constitutionally insufficient. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

To constitute a liberty interest, an individual must have a legitimate claim or entitlement to the subject of the deprivation. *See id.* Since the Fourteenth Amendment does not provide any legitimate claim to remaining in the general prison population, *see Griffin v. Vaughn*, 112 F.3d 703 (3d Cir. 1997), living in a single cell, *see Rhodes v. Chapman*, 452 U.S. 337 (1981), maintaining a particular prison work assignment, *see Bryan v. Werner*, 516 F.2d 233 (3d Cir. 1975), or being granted parole, *see Bradley v. Dragovich*, No. Civ. A. 97-7660, 1998 WL 150944 (E.D. Pa. Mar. 27, 1998), any valid interest Plaintiff may have must emanate from state law. *See Sandin v. Conner*, 515 U.S. 472 (1995). There is no state law that supports the alleged liberty interests Plaintiff claims, *see, e.g., Rogers v. Pennsylvania Bd. of Probation and Parole*, 724 A.2d 319, 323 (Pa. 1999), nor does Plaintiff contend that any of his alleged interests were created by state law or have been recognized by Pennsylvania courts. Accordingly, Plaintiff did not have any protected liberty interest that was affected by the misconduct issued and thus he was entitled to no procedural due process protection.

b. Substantive Due Process

The Third Circuit has recognized a cause of action under substantive due process that is distinct from procedural due process. *See Burkett v. Love*, 89 F.3d 135, 139-40 (3d Cir. 1996); *Block v. Potter*, 631 F.2d 233, 236 (3d Cir. 1980). Even if no liberty interests or rights exist to a government benefit, there are certain reasons upon which the government may not rely in exercising its discretion. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

Under substantive due process, a state may not make a determination on constitutionally impermissible grounds, such as race or in retaliation for exercising constitutional rights. *See Burkett*, 89 F.3d at 140. Similarly, the state may not base a decision

on factors bearing no rational relationship to the interests of the Commonwealth. *See Block*, 631 F.2d at 237.

Nothing Plaintiff alleges intimates that the DOC relied on any unconstitutional factors when it acted. To the contrary, as previously noted, the state's significant and legitimate security interests in detecting and preventing unlawful use of drugs by inmates provides a rational basis for its decisions to test and punish inmates for use of illegal drugs. Regarding these interests, the Supreme Court has repeatedly emphasized the wide discretion prison authorities have in dealing with matters of prison security. *See Bell v. Wolfish*, 441 U.S. 520, 548 (1979) ("courts should ordinarily defer to [prison authorities'] expert judgment in such matters [as prison discipline and institutional security]"); *Rhodes v. Chapman*, 452 U.S.337, 349 n.14 (1981) ("a prison's internal security is peculiarly a matter normally left to the discretion of prison administrators."). Plaintiff fails to allege that the decisions he challenges exceeded the discretion of prison administrators. Accordingly, he has failed to state a claim that his substantive due process rights were violated.

c. Equal Protection

The Equal Protection Clause of the Fourteenth Amendment is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). To establish a viable claim under the Equal Protection Clause, a plaintiff must allege that a defendant treated him differently than he treated other similarly situated persons. *See Brown v. Borough of Mahaffey*, 35 F.3d 846, 850 (3d Cir. 1994).

Plaintiff asserts generally that other unnamed prisoners were permitted to have a different type of drug test. *See Amend. Compl.* ¶ 79. He does not allege, however, that these

“other prisoners” were similarly situated, or the circumstances under which such testing was allowed. Nor does Plaintiff allege that the Defendants he has sued in this case ever authorized a different test for any inmate. Consequently, Plaintiff has failed to meet the minimum requirements for a viable equal protection claim.

According to the Third Circuit, “To accomplish the dual objectives of weeding out frivolous cases and keeping federal courts open to legitimate civil rights claims, courts should allow liberal amendment of civil rights complaints under Fed. R. Civ. P. 15(a).” *Rotolo v. Borough of Charleroi*, 532 F.2d 920, 923 (3d Cir. 1976). Therefore, Plaintiff will be permitted to file an amended complaint with respect to his claims that his Fourth, Eighth, and Fourteenth Amendment rights were violated, insofar as the facts permit. Because, however, Plaintiff’s Fifth and Sixth Amendment claims are barred by controlling Supreme Court precedent, leave to amend will not be granted with respect to those claims.

**III. ORDER**

AND NOW, therefore, this 30<sup>th</sup> day of May 2000, upon consideration of

Defendants' Motions to Dismiss, **IT IS ORDERED THAT:**

1. Defendants' Motions to Dismiss are GRANTED.
2. Plaintiff's Fifth and Sixth Amendment claims against all Defendants are DISMISSED with prejudice.
3. Plaintiff's Fourth, Eighth, and Fourteenth Amendment claims against all Defendants are DISMISSED with leave to amend no later than June 1, 2000.
4. Based upon the conclusions stated herein, there is no basis for the issuance of a certificate of appealability.

  
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Yvette Kane  
United States District Judge