

THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY
CIVIL DIVISION

CLARK A. WEBER, : No. S-2457-2012
Plaintiff :
v. :
OFFICER WHITKO :
JOHN/JANE DOE et. al., :
Defendants :

ORDER OF COURT

GOODMAN, J.

AND NOW, this 6th day of March, 2013, upon consideration of the Plaintiff's

Motion to Proceed in Forma Pauperis, it is hereby ORDERED that the said Motion is

DENIED and the action is **DISMISSED WITH PREJUDICE.**¹

BY THE COURT:

Goodman, J.

PROthonotary
OFFICE
SCHUYLKILL
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P3:01

¹ On or about November 15, 2012, the Plaintiff filed a writ of summons, request for pre-complaint discovery and petition to proceed in forma pauperis. On or about December 4, 2012, this Court entered an Order 1) denying the Plaintiff's request for pre-complaint discovery and 2) denying the request to proceed in forma pauperis as premature as the Plaintiff had not yet filed a complaint. The Order noted that the Plaintiff had 90 days to file the complaint from the date he filed the original petition. On February 25, 2013, the Plaintiff filed a Petition for Rule to Show Cause/Stay Proceedings requesting that this Court allow him the opportunity to file the attached complaint although it is not timely. This Court has now had the opportunity to review the proposed complaint, together with the petition to proceed in forma pauperis and is prepared to make a decision.

42 Pa.C.S.A. § 6602 provides: "(e) Dismissal of litigation.--Notwithstanding any filing fee which has been paid, the court shall dismiss prison conditions litigation at any time, including prior to service on the defendant, if the court determines any of the following: . . . (iii) (2) The prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude the relief."

The Plaintiff is currently incarcerated in SCI-Forest. He is seeking compensatory and declaratory relief for claims that arose in September 2012 when he was incarcerated at SCI-Frackville. He alleges that the Defendant massaged his buttocks for five minutes. He alleges that, after he complained of the incident, he was placed in psychiatric observation where he suffered cruel punishments, including the following: (i) No showers, hygiene products or clean undergarments; (ii) No running water to drink, wash in or flush toilet with; (iii) Only fed breakfast and one cup of water per day; (iv) Continuous cold air blowing in cell; (v.) Constant illumination from powerful lights; (vi) Feces on walls and tray slot for food. The Plaintiff is seeking declaratory relief that the act of Officer Whitko in massaging his buttocks for five minutes was the tort and crime of assault and battery and that the acts/omissions of the defendant violated his rights. He is further seeking compensatory relief for the physical and emotional damage from the unwanted sexual contact and for the loss of life/mental and emotional distress resulting from prolonged confinement.

First, we note that this action is civil in nature and to Plaintiff requests a declaration that the Defendant committed a crime of assault and battery. This Court does not have jurisdiction to make a declaration as to whether the Defendant committed a crime.

Furthermore, this Court cannot issue declaratory relief unless there is an actual case or controversy. At this stage, this Court finds that the other issues complained of are administrative in nature and the Plaintiff was required to exhaust administrative remedies. While the Plaintiff alleges that he exhausted administrative remedies, he gives no specific reference to the prison grievance system or appeals. The Plaintiff is required in Pennsylvania to demonstrate exhaustion of administrative remedies in the complaint and failure to exhaust administrative remedies is an affirmative defense which would preclude relief. Watson v. Pennsylvania Dept. of Corrections, 990 A.2d 164 (Pa. Commw. 2010). As the Plaintiff has not demonstrated exhaustion of administrative remedies, this Court dismisses this action pursuant to 42 Pa.C.S.A. § 6602 (e)