

THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY

CIVIL DIVISION

CLARK A. WEBER,	:	No. S-451-2013
	:	
Plaintiff	:	
	:	
v.	:	
	:	
SUPERINTENDANT,	:	
	:	
Defendant	:	

PROthonotary's
 OFFICE
 SCHUYLKILL COUNTY PA
 17901
 2013 MAR 22 P 3:04

ORDER OF COURT

GOODMAN, J.

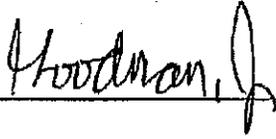
AND NOW, this 22ND day of March, 2013, upon consideration of the Plaintiff's Motion to Proceed in Forma Pauperis, it is hereby ORDERED that the said Motion is DENIED and the action is DISMISSED WITH PREJUDICE.¹

¹ Plaintiff filed this pro se petition for declaratory relief, together with a petition to proceed in forma pauperis. *Pa.R.C.P. 240(j)* provides: "If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action ... if it is satisfied that the action ... is frivolous. A frivolous action has been defined as one that "lacks an arguable basis either in law or in fact." *Neizke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1990).

The Plaintiff is currently incarcerated in SCI-Forest and was previously incarcerated at SCI-Frackville. The Plaintiff alleges that the prison officials at SCI-Frackville are blocking his access to the courts and requests a declaratory judgment stating that: 1) Defendants' acts are violating Plaintiff's rights secured under the Laws, Statutes and Constitutions of the United States and the Commonwealth of Pennsylvania." The Plaintiff also requests that this Court restore Plaintiff's appeal rights to the misconduct appeals, grievances and grievance appeals noted in Plaintiff's Exhibit "1", which is attached to the complaint. The Plaintiff alleges that he is waiting for a response from the Superintendent's office with regard to certain misconduct and grievance appeals. Since he has had no response he alleges that the Superintendent has blocked his access to the Courts.

"Declaratory relief is not available unless an actual controversy exists, is imminent or inevitable." *Johnson v. Horn*, 782 A.2d 1073 (Pa. Commw. 2001)(citing *Pennsylvania Turnpike Comm'n v. Hefer*, 142 Pa. Commw. 502, 597 A.2d 754 (1991)). "A declaratory judgment is not appropriate to determine rights in anticipation of events which may never occur but is appropriate where there is imminent and inevitable litigation." *Id.* Furthermore, "a valid claim of denial of

BY THE COURT:



access to the courts requires allegations of an actual injury to a non-frivolous legal claim as a result of the defendants' actions." Lewis v. Casey, 518 U.S. 343, 356 (1996).

This Court further notes that the internal prison grievance system allows prisoners to seek review of issues they encounter during their incarceration with a staff grievance officer which may be appealed to the superintendent of the prison and, ultimately, to the chief grievance officer of the Department of Corrections. The Commonwealth Court has stated with regard to this system:

[I]nternal prison operations are more properly left to the legislative and executive branches, and ... prison officials must be allowed to exercise their judgment in the execution of policies necessary to preserve order and maintain security free from judicial interference. [Citation omitted.] We agree. Unlike the criminal trial and appeals process where a defendant is accorded the full spectrum of rights and protections guaranteed by the state and federal constitutions, and which is necessarily within the ambit of the judiciary, the procedures for pursuing inmate grievances and misconduct appeals are a matter of internal prison administration and the "full panoply of rights due a defendant in a criminal prosecution is not necessary in a prison disciplinary proceeding...."

Iseley v. Beard, 841 A.2d 168 (Pa. Commw. 2004).

Instantly, the Plaintiff asserts that he cannot file a complaint in the court as he cannot exhaust administrative remedies because he has had no response to certain grievances and misconducts. However, the Plaintiff has not asserted a legal claim that he seeks to raise before the court. Therefore, this Court cannot determine whether he has a meritorious legal claim and he has not set forth a cause of action for denial of access to the courts. Furthermore, the Plaintiff has not set forth an actual case or controversy that would entitle him to declaratory relief. Finally, the Plaintiff requests this Court to restore his appellate rights with regard to certain misconducts and grievances within the internal prison grievance system. The Plaintiff has not set forth any basis for this Court to consider this request. Furthermore, the only facts alleged reveal that the Superintendent failed to respond to two letters that he wrote and that one grievance was rejected as it was filed too late. Given these facts, this Court finds that this issue is administrative in nature and must be handled through the proper administrative channels in the prison. Balley v. Wakefield, 933 A.2d 1081 (Pa. Commw. 2007).

We find that the Plaintiff's pleading is frivolous action because it "lacks an arguable basis in law or in fact" and that the Plaintiff has failed to state any cause of action for which relief can be granted by this Court. Therefore, we must deny Plaintiff's request to proceed in forma pauperis, and dismiss the action with prejudice.