

**THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY
CIVIL DIVISION**

CLARK A. WEBER,

Plaintiff

No. S-850-2013

v.

JOHN E. WETZEL, et al,

Defendants

ORDER OF COURT

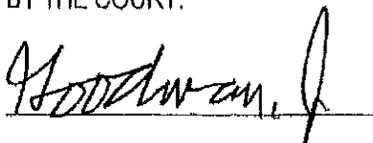
GOODMAN, J.

AND NOW, this 23RD day of April, 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:



2013 APR 23 P 3:06
PROthonotary
OFFICE
SCHUYLKILL CITY PA
19301

¹ Plaintiff filed this pro se civil complaint, 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).

At all relevant times for this complaint, the Plaintiff was incarcerated at SCI-Frackville. The Plaintiff brings this complaint against John E. Wetzel, Secretary of the Pennsylvania Department of Corrections, Suzanne N. Hueston, Chief Counsel for Department of Corrections and Robert J. Collins, Superintendent at S.C.I. Frackville. The Plaintiff asserts that he had constant access to the mini law library from August 1, 2011 until June 7, 2012 while in solitary confinement. From June 7, 2012 until December 19, 2012, his access to the mini-law library was cut off. The Defendant asserts that he filed grievances and appeals with regard to the lack of access. He alleges that he signed off on the grievances as he believed the situation would be remedied. He asserts injury because he initiated the case docketed at S-1521-2012 on July 10, 2012, which was dismissed on preliminary objections on October 9, 2012. The Plaintiff requests declaratory relief asserting that the acts/commissions of the Defendants violated his rights and compensatory and punitive damages.

The right of access to the courts "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72, 83 (1977). In Lewis v. Casey, 94-1511, 116 S.Ct. 2174 (1996), the Supreme Court clarified that the denial of access to a law library only equates with denial of access to the courts where it hinders the prisoner's ability to pursue a "non-frivolous claim."

Instantly, the Plaintiff asserts that he had constant access to the law library for almost one year. After this access was limited, he filed multiple cases in the courts and was permitted in these cases to proceed in forma pauperis. He filed motions and briefs citing case law. He also raised the issue of access to the law library in the case docketed at S-1521-2012 in the form of a request for a temporary preliminary injunction, which was denied. The Plaintiff has failed to allege sufficient facts to show that denial of access to a law library hindered his ability to pursue a "non-frivolous claim."

We find that the Plaintiff's pleading is a 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.