

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

<b>DEMETRIUS BAILEY, et al.,</b>	:	<b>CIVIL ACTION NO. 3:CV-01-1214</b>
<b>Plaintiffs</b>	:	
	:	<b>(Judge Munley)</b>
	:	
<b>v.</b>	:	
	:	
<b>JOHN CHESNEY, et al.,</b>	:	
<b>Defendants</b>	:	

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**MEMORANDUM AND ORDER**

**I. Background**

The Plaintiff, Demetrius Bailey, a Pennsylvania state prisoner who is currently incarcerated at the State Correctional Institution at Frackville ("SCI-Frackville"), initiated this civil rights action by filing a complaint pursuant to 42 U.S.C. §1983 on June 29, 2001. (Doc. 1). At the time of the filing of the complaint, there was a total of five named Plaintiffs who complained of numerous civil rights violations; Plaintiffs Bailey, Mack, Kelley, Smith and Henley. On July 16, 2002, an Order issued dismissing the complaint as to four of the named plaintiffs and allowing it to proceed with respect to Plaintiff Bailey's claim of denial of access to the courts against Defendants Derfler and Kerestes, and his inadequate medical care claim against Defendants O'Connor and Maria. Presently pending are the Corrections Defendants' Motion for Summary Judgment (Doc. 66) and Defendants O'Connor and Braskie's (incorrectly identified as "Maria") Motion for Summary Judgment. (Doc. 72).<sup>1</sup> The motions are fully

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<sup>1</sup>The Corrections Defendants also move on behalf of Linda Narouth. As correctly pointed out by the Plaintiff, Narouth has already been dismissed from this action in the Order of July 16, 2002. (Doc. 71, p. 5). Therefore, the portion of the motion that concerns Narouth will not be addressed

briefed and ripe for disposition. For the following reasons, the motions will be granted.

## II. Motion for Summary Judgment.

### A. Standard.

A motion for summary judgment may not be granted unless the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56. The court may grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions on file, and any affidavits show that there is no genuine issue as to any material fact. Fed.R.Civ.P. 56(c). An issue of fact is "'genuine' only if a reasonable jury, considering the evidence presented, could find for the nonmoving party." *Childers v. Joseph*, 842 F.2d 689, 693-694 (3d Cir. 1988) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

The burden of proving that there is no genuine issue of material fact is initially upon the movant. *Forms, Inc. v. American Standard, Inc.*, 546 F. Supp. 314, 320 (E.D. Pa. 1982), *aff'd mem.* 725 F.2d 667 (3d Cir. 1983). Upon such a showing, the burden shifts to the nonmoving party. *Id.* The nonmoving party is required to go beyond the pleadings and by affidavits or by "depositions, answers to interrogatories and admissions on file" designate "specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e).

In determining whether an issue of material fact exists, the court must consider the evidence in the light most favorable to the nonmoving party. *White v. Westinghouse Electric Company*, 862 F.2d 56, 59 (3d Cir. 1988). In doing so, the court must accept the nonmovant's allegations as true and resolve any conflicts in his favor. *Id.*, quoting *Gans v. Mundy*, 762 F.2d 338, 340 (3d Cir. 1985), *cert. denied*, 474 U.S. 1010 (1985); *Goodman v. Mead Johnson & Co.*,

534 F.2d 566, 573 (3d Cir. 1976) *cert. denied*, 429 U.S. 1038 (1977).

B. Discussion.

1. Denial of Access to Courts claim.

Prior to March 22, 2001, Bailey was incarcerated at the State Correctional Institution at Greene ("SCI-Greene"). (Doc. 69, Appendix, Exhibit 3, Deposition of Demetrius Bailey (Bailey Deposition), p. 5). While at SCI-Greene, he initiated an action in the Court of Common Pleas of Allegheny County captioned *Bailey v. Blaine, et al.*, AR00-004527. (Doc. 69, Appendix, Exhibit 4). On July 19, 2000, an order was entered in the Court of Common Pleas of Allegheny County "dismissing Plaintiff's underlying Complaints because the Complaint failed to state causes of action and were deemed frivolous within the meaning of Pa.R.C.P. 240(j), and 42 Pa.C.S. §6602(e)(2) because Plaintiff was seeking redress of prison administrative issues clearly outside the jurisdiction of the Court of Common Pleas of Allegheny County." (Doc. 69, Appendix, Exhibit 4, "D-1"). The Plaintiff filed an appeal which was assigned Commonwealth Court of Pennsylvania Docket No. 220 CD 2001. (Doc. 69, Appendix, Exhibit 4, "D-7"). On February 26, 2001, Bailey filed his appellate brief. (*Id.*). Thereafter, he was granted permission to file a reduced number of copies of his brief. (Doc. 69, Appendix, Exhibit 4, "D-2"). Bailey testified at his deposition that he mailed the required four copies to the Commonwealth Court on or about March 13, 2001, while he was still incarcerated at SCI-Greene. (Doc. 69, Exhibit 3, Bailey Deposition, p. 21).

On March 22, 2001, Bailey was transferred from SCI-Greene to SCI-Frackville. (*Id.*).

He was immediately placed in the Restricted Housing Unit (RHU). (Doc. 69, Appendix, Exhibit 1, Declaration of LT. Thomas Derfler (Derfler Declaration), ¶ 2). On March 27, 2001, Bailey filed a grievance, which was assigned grievance No. FRA-0355-01, concerning his request to receive extra legal material in excess of one records box. On March 30, 2001, Defendant Derfler responded to the Plaintiff by citing to the limitation on possession of one record center box as set forth in DC-ADM 801. (Derfler Declaration, Exhibit B). Under DC-ADM 801, inmates are only permitted to retain a certain amount of religious and legal materials in their cells at any one time. DC-ADM 801 reads in pertinent part: "DC [Disciplinary Custody] status inmates will be permitted to retain religious as well as legal materials that may be contained in one (1) records center box. Any additional legal or religious material will be stored and made available upon request on an even exchange basis; not more than once every thirty (30) days unless approved by PRC [Program Review Committee]." (Derfler Declaration, ¶ 3, Exhibit B). Inmates are made aware of Department policy DC-ADM 801 through the Inmate Handbook. At his deposition, Bailey admitted to having a copy of the Inmate Handbook as well as being aware of the policy concerning the limitation of legal materials in one's cell. (Doc. 69, Exhibit 3, Bailey Deposition, pp. 8-10, 36).

On March 30, 2001, Bailey filed another grievance, grievance No. FRA-0268-01, concerning the denial of his request for extra boxes of legal materials in his cell. Derfler responded on April 9, 2001, stating as follows:

I spoke to you and I also spoke to Sgt. Sheriff. Sergeant Sheriff informed me that you were given the opportunity to exchange

your legal material and that you wanted to remove approximately three (3) times the amount of legal material that you were turning in.

Sgt. Sheriff also informed me that you then became argumentative; at which time you were returned to your cell.

As stated in Grievance #FRA-0355-01, per DC-ADM 801, Page 16, M. #15 which reads in part; "Any additional legal or religious materials will be stored and made available upon request on an even exchange basis".

From information gathered, I find no evidence to support your claim

(Derfler Declaration, Exhibit C)(emphasis in original). Bailey was afforded the opportunity to exchange his box of materials once every 30 days as per policy. (Doc. 69, Exhibit 1, Derfler Declaration, ¶ 8). Bailey asked Defendant Deputy Superintendent Kerestes about having additional boxes of legal material in his cell. Kerestes directed Bailey to Lt. Derfler. (Doc. 69, Bailey Deposition, p. 25).

Bailey was released from the RHU in August, 2001. (Doc.69, Exhibit 3, Bailey Deposition, pp. 24-25). On August 28, 2001, the Commonwealth Court dismissed Bailey's appeal for failing to file additional copies of his brief. (*Id.* at p. 20). Bailey testified that he was unaware that the required four copies of his brief had not been filed until he received the Court's Order dismissing the appeal. (*Id.* at pp. 20-23). He testified that at the time he placed his four copies in the hands of the correctional officer at SCI-Greene, he assumed that they had been mailed and received by the Court. (*Id.*). He did not confirm that the documents were mailed, or that they were received by the Court. (*Id.* at p. 23). Bailey filed a motion for reconsideration

with the Commonwealth Court, which was denied. (*Id.* at p.23-24, Doc. 69 Exhibit 4, "D-7).

In first addressing the Plaintiff's claim against Defendant Derfler, it is clear from the above that the Plaintiff has failed to demonstrate that he suffered actual injury at the hands of Defendant Derfler as provided in *Lewis v. Casey*, 518 U.S. 343 (1996) and *Oliver v. Fauver*, 118 F.3d 175 (1997). It is well established that prisoners have a constitutional due process right of access to the courts. *Bounds v. Smith*, 430 U.S. 817 (1977). However, in order to prevail on such a claim, it is necessary to allege an actual injury -- an instance in which the Plaintiff was actually denied access to the courts. *Lewis v. Casey*, 518 U.S. 343 (1996); *Peterkin v. Jeffes*, 855 F.2d 1021, 1041 (3d Cir. 1988), citing *Hudson v. Robinson*, 678 F.2d 462, 466 (3d Cir. 1982); *Kershner v. Mazurkiewicz*, 670 F.2d 440, 444 (3d Cir. 1982).

The Plaintiff argues in his brief in opposition that Defendant Derfler caused him injury by failing to provide him with the legal materials necessary to comply with the Commonwealth Court's Order allowing him to file a reduced number of briefs. (Doc. 71). However, he points to no evidence of record to support his position. The grievances filed are general complaints about the limitations the regulations place on his ability to access his legal property. There is no mention of his inability to comply with the Commonwealth Court's Order. Further, such a statement is inconsistent with the Plaintiff's own deposition testimony. The Plaintiff testified that he complied with the Commonwealth's Order on March 13, 2001, when he gave the four required copies to a correctional officer at SCI-Greene, approximately nine days prior to his transfer to SCI-Frackville and his placement in the RHU. He further testified that he assumed

that the copies had been mailed by the corrections officer and had no reason to think otherwise until after he received the Court's August 27, 2001, Order of Dismissal. That order was not certified from the record and mailed by the Commonwealth Court until August 28, 2001. The Plaintiff was released from the RHU sometime in August, 2001. Therefore, it is clear from the record that the Plaintiff could not have suffered an injury at the hands of Defendant Derfler. In order to defeat a motion for summary judgment, the nonmoving party is required to go beyond the pleadings and by affidavits or by "depositions, answers to interrogatories and admissions on file" designate "specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). The Plaintiff has failed to come forth with a scintilla of evidence that would demonstrate the Defendant Derfler denied him access to the courts. Defendant Derfler is entitled to an entry of summary judgment.

With regard to Bailey's claim against Defendant Deputy Superintendent Kerestes, in order to state an actionable claim under Section 1983, the plaintiff must allege that a person has deprived him or her of a federal right and, that the person who caused the deprivation acted under color of state or territorial law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Furthermore, "[a] defendant in a civil rights action must have personal involvement in the alleged wrongs . . . . Personal involvement may be shown through allegations of personal direction or actual knowledge and acquiescence." *Rode v. Dellarciprete*, 845 F.2d 1195, 1207-08 (3d Cir.1988). Also, it is well established that claims brought under § 1983 cannot be premised on a theory of *respondeat superior*. *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). Rather, each

named defendant must be shown, *via* the complaint's allegations, to have been personally involved in the events or occurrences which underlie a claim. *See Rizzo v. Goode*, 423 U.S. 362 (1976); *Hampton v. Holmesburg Prison Officials*, 546 F.2d 1077 (3d Cir. 1976). As explained in *Rode*:

A defendant in a civil rights action must have personal involvement in the alleged wrongs. . . . [P]ersonal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity.

*Rode*, 845 F.2d at 1207. The Plaintiff states that he spoke to Defendant Kerestes concerning the restrictions on his legal material and Defendant Kerestes directed him to Defendant Derfler. The Plaintiff fails to set forth any facts demonstrating that Defendant Kerestes was personally involved in conduct amounting to a constitutional violation. Rather, he attempts to impose liability upon Defendant Kerestes in his role as a supervisory official. This he cannot do. Defendant Kerestes is therefore entitled to an entry of summary judgment.

## 2. Denial of Adequate Medical Care Claim.

The Plaintiff alleges that following an assault at SCI-Greene, during which he sustained injuries to his wrists and ankles, he was transferred to SCI-Frackville and his requests for treatment were denied by Defendants Physician's Assistant Braskie and Dr. O'Connor. The record reveals the following facts. Upon arriving at SCI-Frackville, the Plaintiff was given an intake examination by a registered nurse. The relevant portion of the medical progress notes indicate the following: "Also states he suffers from wrist and ankle pain from being 'beat up'

at SCI Greene Feb 01. No visible signs upon inspection. Gait steady and able to move wrist [without] any difficulty. . . . Denies any physical disabilities, bruises, deformities or current evidence of trauma." (Doc. 73, Exhibit B). He testified in his deposition that after the date of his intake examination, he requested to see a doctor concerning pain in his wrists and ankles and was seen by Defendant Physician's Assistant Braskie, whom the Plaintiff identifies as "Maria." (Doc. 73, Exhibit C, p. 21, Plaintiff's deposition, p. 77). On this occasion, the only time he was seen by her, she directed him to continue the Motrin and signed him up to see the doctor. (*Id.* at p.78). He states that she "[s]hould have checked me. She had knowledge that I was assaulted and she had the duty to examine me to see if there was any further injury from that assault." (*Id.*). Thereafter, the Plaintiff was seen by Defendant Dr., O'Conner. Dr. O'Conner requested that the Plaintiff move his wrists and ankles and conducted a physical examination. Dr. O'Conner then told him that he was alright and that the only thing he could do for him was to have him continue the Motrin. (*Id.* at 79). The Plaintiff state that he never sought further treatment from Dr. O'Conner for his wrists and ankles.

"A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 827, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) citing *Helling v. McKinney*, 509 U.S. 25, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993); *Wilson v. Seiter*, 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991); *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). An inadequate medical care claim, as is presented here, requires allegations that the prison official acted with

“deliberate indifference to serious medical needs” of the plaintiff, while a prisoner. *Estelle*, 429 U.S. at 104 (1976); *Unterberg v. Correctional Medical Systems, Inc.*, 799 F. Supp. 490, 494-95 (E.D. Pa. 1992). The official must know of and disregard an excessive risk to inmate health or safety. *Farmer*, 511 U.S. at 837. “[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* “The question...is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial ‘risk of serious damage to his future health.’” *Farmer*, 511 U.S. at 843. This test “affords considerable latitude to prison medical authorities in the diagnosis and treatment of the medical problems of inmate patients. Courts will ‘disavow any attempt to second guess the propriety or adequacy of a particular course of treatment...which remains a question of sound professional judgment.’” *Little v. Lycoming County*, 912 F.Supp. 809, 815 (M.D. Pa) *aff’d*, 103 F.3d 691 (1996) *citing Inmates of Allegheny County Jail v. Pierce*, 612 F.2d 754,762 (3d Cir. 1979), *quoting Bowring v. Godwin*, 551 F.2d 44, 48 (4<sup>th</sup> Cir. 1977).

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). More than a decade ago, the Third Circuit ruled that “while the distinction between deliberate indifference and malpractice can be subtle, it is well established that as long as a physician exercises professional judgment his behavior will not violate a prisoner’s constitutional rights.”

*Brown v. Borough of Chambersburg*, 903 F.2d 274, 278 (3d Cir. 1990). "A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice." *Estelle v. Gamble*, 429 U.S. at 107.

Where an inmate is provided with medical care and the dispute is over the adequacy of that care, an Eighth Amendment claim does not exist. *Nottingham v. Peoria*, 709 F.Supp. 542, 547 (M.D.Pa. 1988). Disagreement among individuals as to the proper medical treatment does not support an Eighth Amendment claim. *Monmouth County Correctional Inst. Inmates v. Lensario*, 834 F.2d 326, 346 (3d Cir. 1987). Only flagrantly egregious acts or omissions can violate the standard. Mere medical malpractice cannot result in an Eighth Amendment violation, nor can any disagreements over the professional judgment of a health care provider. *White v. Napoleon*, 897 F.2d 103, 108- 10.

Assuming, without deciding, that Plaintiff's ankle and wrist pain back rises to the level of a serious medical need in the constitutional sense, the record illustrates clearly that the Plaintiff has received medical attention for his complaints of ankle and wrist pain. His complaints of pain were not ignored by the prison medical staff. He was evaluated and treated. The record demonstrates that Physician's Assistant Braskie and Dr. O'Conner exercised their professional judgment in electing to solely provide the Plaintiff with pain medication. Plaintiff simply disagrees with the Defendants' treatment decisions and medical judgment not to order x-rays or do further testing. (Doc. 74, p. 1). At most, the allegations in the complaint rise to the level of mere negligence. As simple negligence cannot serve as a predicate to liability under

§ 1983, *Hudson v. Palmer*, 468 U.S. 517 (1984), Plaintiff's civil rights complaint fails to articulate an arguable claim under § 1983. *See White*, 897 F.2d at 108-110. Thus, Physician's Assistant Braskie and Dr. O'Conner are entitled to summary judgment in this matter.

### 3. State Law Claims.

To the extent Bailey sets forth any state-law claims, we decline to exercise supplemental jurisdiction over them. 28 U.S.C. § 1367(c)(3). Those claims will be dismissed without prejudice to any right the Plaintiff may have to pursue them in state court. In so holding, we express no opinion as to the merits of any such claim

### III. Conclusion.

An appropriate Order will issue granting both the Corrections Defendants' and Defendants O'Conner and Braskie's motions for summary judgment and, declining to exercise supplemental jurisdiction over any state law claims.

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

DEMETRIUS BAILEY, et al.,	:	CIVIL ACTION NO. 3:CV-01-1214
Plaintiffs	:	
	:	(Judge Munley)
	:	
v.	:	
	:	
JOHN CHESNEY, et al.,	:	
Defendants	:	

.....

**ORDER**

AND NOW, to wit, this 30 day of September, 2003, consistent with the accompanying Memorandum filed this date, it is hereby **ORDERED** that:

(1) The Corrections Defendants' Motion for Summary Judgment (Doc. 66) and the Motion for Summary Judgment filed on behalf of Defendants O'Conner and Braskie, (Doc. 72) are **GRANTED** and the Clerk of Court is directed to enter judgment in favor of these Defendants and against the Plaintiff;

(2) Any state-law claims are dismissed without prejudice to any right the Plaintiff may have to pursue them in state court;

(3) The Clerk of Court is directed to close this case.

(4) Any appeal taken from this Order will be deemed frivolous, without probable cause, and not taken in good faith.

**BY THE COURT:**

s/James M. Munley  
**JUDGE JAMES M. MUNLEY**  
United States District Court