

UNREPORTED- NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 03-4235

DEMETRIUS BAILEY; JERALD MACK; ALFONSO SMITH;
RICHARD HENLEY; KEITH KELLEY

v.

JOSEPH W. CHESNEY; BRUCE K. SMITH; JOHN KERESTES;
J. MILLER; DURANT; BOYLE; DERFLER; TINA STALEY;
KEVIN KANE; LINDA NAUROTH; R. O'CONNOR; MARIA

Demetrius Bailey,
Appellant

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 01-cv-01214)
District Judge: Honorable James M. Munley

Submitted Under Third Circuit LAR 34.1(a)
June 9, 2004

BEFORE: SLOVITER, NYGAARD and CHERTOFF, CIRCUIT JUDGES

(Filed: June 9, 2004)

OPINION

PER CURIAM

In 2001 Demetrius Bailey and four other prisoners filed a civil rights action. The District Court dismissed the complaint with regard to all the plaintiffs except Bailey, and all but two of Bailey's claims, for failure to exhaust administrative remedies. The first claim, against defendants Derfler and Kerestes, alleges denial of his right of access to the courts. The second, against defendants O'Connor and Maria, alleges inadequate medical care. After further proceedings the District Court granted the defendants' motion for summary judgment with regard to the remaining claims.¹

I

In Claim 1 Bailey alleges that while he was an inmate at SCI Greene his appeal to the Commonwealth Court of a state civil action was dismissed for failure to file the required copies of his brief. Bailey testified at a deposition that after he filed his brief he obtained permission from the Commonwealth Court to file a reduced number of copies, which he mailed in March 2001 from SCI Greene. A week later he was transferred to SCI Frackville, where he was immediately placed in the Restricted Housing Unit. Bailey filed a grievance seeking leave to receive legal material in excess of that permitted by prison regulations. After that grievance was denied he filed another, complaining that his

¹ We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review of the District Court's orders granting the motion for summary judgment is plenary. Curley v. Clem, 298 F.3d 271 (3d Cir. 2002). We note that in his brief Bailey does not challenge the District Court's dismissal of the bulk of his claims for failure to exhaust.

requests for extra boxes of legal materials were denied. That grievance was also unsuccessful. In August 2001 Bailey was released from the RHU. Later that month the Commonwealth Court dismissed his appeal for failing to provide additional copies of his brief. Bailey testified that it was not until then that he realized that the court had not received the copies he mailed in March. He maintains that if he had been allowed access to the extra legal materials he requested he could have filed the required briefs.

The District Court found the claim meritless. Not only did Bailey's grievances make no mention of his need to file briefs in the Commonwealth Court, but his deposition testimony – that he complied with the court's order in March 2001 before he was transferred to SCI Frackville, that he assumed that the copies had been mailed by the prison authorities and that he had no reason to believe otherwise until his appeal was dismissed – effectively contradicts his claim. Bailey's claim against defendant Kerestes fails for the additional reason that he alleges no personal involvement on Kerestes' part as required by Rizzo v. Goode, 423 U.S. 362 (1976); at most he alleges *respondeat superior*, which is not grounds for liability in this context.

We agree with the District Court. If, as Bailey testified, he gave the required copies of his brief to prison authorities for mailing while he was an inmate at SCI Greene, it is unlikely that the actions of the defendants – who are officers at SCI Frackville – are responsible for the dismissal of his appeal. Bailey has provided no reasons (such as evidence that the defendants learned that the Commonwealth Court had not received the

briefs and concealed that information from Bailey) to conclude otherwise.

II

In his second claim Bailey alleges that he sustained injuries to his wrists and ankles during an assault at SCI Greene but that after he was transferred to SCI Frackville his requests for treatment were denied. The District Court found this allegation belied by the record, including Bailey's deposition testimony, which indicates that he was given an intake examination by a nurse at SCI Frackville, that there were no visible signs of injury, that he was subsequently seen by a nurse and a doctor when he complained of continuing pain, that the doctor found nothing wrong but prescribed Motrin for his pain, and that Bailey did not seek further treatment thereafter. Based on these facts, the district found no evidence of deliberate indifference to a substantial risk of serious harm as required by Farmer v. Brennan, 511 U.S. 825 (1994). Even assuming that Bailey's wrist and ankle pain amounted to a serious medical need, at most he has alleged negligence, which is not cognizable in a section 1983 action. Estelle v. Gamble, 429 U.S. 97 (1976).

Again we agree with the District Court.

III

In his complaint Bailey also alleges, *inter alia*, that he was subject to retaliatory grievances at SCI Greene, that he was transferred to SCI Frackville for retaliatory reasons, and that retaliatory grievances were filed against him at SCI Frackville. On appeal Bailey complains that the District Court ignored these retaliation claims. That is

not true. Rather, the District Court dismissed them for failure to exhaust administrative remedies. Bailey has provided no reasons explaining why the District Court's doing so was erroneous.²

Accordingly, we shall affirm the judgment of the District Court.

² We note, moreover, that with the exception of defendant Staley, the defendant prison officials are all employed at SCI Frackville and thus are not likely to have played any role in the alleged retaliatory actions at SCI Greene.