

CASE CLOSED

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

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DEMETRIUS BAILEY,)	
Plaintiff)	
)	
vs.)	Civil Action No. 99-470
JAMES S. PRICE, Superintendent,)	Judge Donald E. Ziegler/
Defendant)	Magistrate Judge Sensenich

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on March 26, 1999, and was referred to United States Magistrate Judge Ila Jeanne Sensenich for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on October 4, 1999, recommended that Plaintiff's complaint be dismissed in accordance with the Prison Litigation Reform Act, 28 U.S.C. § 1915(e)(2)(B)(ii) and/or 28 U.S.C. § 1915A. The parties were allowed ten (10) days from the date of service to file objections. Service was made on plaintiff at SCI Greene. Plaintiff filed objections to the report and recommendation on November 18, 1999. After de novo review of the pleadings and documents, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 22nd day of Dec., 1999;

IT IS HEREBY ORDERED that Plaintiff's complaint is dismissed in accordance with the Prison Litigation Reform Act, 28 U.S.C. § 1915(e)(2)(B)(ii) and/or 28 U.S.C. § 1915A.

The report and recommendation of Magistrate Judge Sensenich, dated October 1, 1999, is adopted as the opinion of the court.


Donald E. Ziegler
Chief United States District Judge

cc: Ila Jeanne Sensenich
U.S. Magistrate Judge

Demetrius Bailey, CP-7819
SCI Greene
1040 East Roy Furman Highway
Waynesburg, PA 15370-8090

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

DEMETRIUS BAILEY,
Plaintiff

vs.

JAMES S. PRICE,
Defendant.

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) Civil Action No. 99-470
) Judge Donald E. Ziegler/
) Magistrate Judge Sensenich
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MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is recommended that Plaintiff's complaint be dismissed in accordance with the Prison Litigation Reform Act, 28 U.S.C. § 1915(e) (2) (B) (ii) and/or 28 U.S.C. § 1915A.

II. REPORT

Plaintiff, Demetrius Bailey, an inmate currently incarcerated at the State Correctional Institution at Greene, located in Waynesburg, Pennsylvania ("SCI-Greene"), commenced this action pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983. Named as the sole Defendant is James Price, former Superintendent of SCI-Greene. Plaintiff alleges that Defendant violated his right to due process as well as Pennsylvania Department of Corrections ("DOC") policy.

A. Standard of Review

In the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996), Congress adopted major changes affecting civil rights actions brought by prisoners in an effort to curb the increasing number of frivolous and harassing law suits

brought by persons in custody. Pertinent to the case at bar is the authority granted to federal courts for *sua sponte* screening and dismissal of prisoner claims. Specifically, Congress enacted a new statutory provision at 28 U.S.C. § 1915A, entitled "Screening," which requires the court to review complaints filed by prisoners seeking redress from a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). If the complaint is "frivolous, malicious, or fails to state a claim upon which relief can be granted," or "seeks monetary relief from a defendant who is immune from such relief," the court must dismiss the complaint. 28 U.S.C. § 1915A(b).

In addition, Congress significantly amended Title 28 of the United States Code, section 1915, which establishes the criteria for allowing an action to proceed in forma pauperis ("IFP"), i.e., without prepayment of costs. Section 1915(e) (as amended) requires the federal courts to review complaints filed by persons who are proceeding in forma pauperis and to dismiss, at any time, any action that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

Plaintiff is considered a "prisoner" as that term is defined under the PLRA.¹ He is seeking redress from officers or employees

¹ Sections 1915 and 1915A, as amended, define the term "prisoner" as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary

of a governmental entity and he has been granted leave to proceed in forma pauperis in this action.² Thus, this Court is required to review his allegations in accordance with the directives provided in 28 U.S.C. §§ 1915A & 1915(e). In reviewing complaints under 28 U.S.C. §§ 1915A & 1915(e), a federal court applies the same standard applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6).³ Dismissal is proper under Rule 12(b)(6) if, as a matter of law, it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Conley v. Gibson, 355 U.S. 41 (1957). Notwithstanding, a plaintiff must allege specific facts supporting his claims to withstand dismissal for failure to state a claim. Brock v. St. Joseph's Hosp., 104 F.3d 358 (4th Cir. Dec. 23, 1996); Whitehead v. Becton, 1996 WL 761937 (D.C. Cir. 1996).

B. Plaintiff's Claim

In his complaint, Plaintiff alleges that on February 5, 1997, he was placed in an observation cell because he was suspected of drug trafficking. On February 6, 1997, he received a misconduct as

program." See 28 U.S.C. §§ 1915(h); 1915A(c).

² See Doc. # 2.

³ See, e.g., Bradley v. Puckett, 157 F.3d 1022, 1025 (5th Cir. 1998); Anyanwutaku v. Moore, 151 F.3d 1053 (D.C. Cir. 1998); Mitchell v. Farcass, 112 F.3d 1483, 1484 (11th Cir. 1997); McGore v. Wrigglesworth, 114 F.3d 601, 604 (6th Cir. 1997); Atkinson v. Bohn, 91 F.3d 1127, 1128 (8th Cir. 1996); Powell v. Hoover, 956 F. Supp. 564, 568 (M.D. Pa. 1997) (applying Rule 12(b)(6) standard to claim dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii)); Tucker v. Angelone, 954 F. Supp. 134 (E.D. Va.), *aff'd*, 116 F.3d 473 (Table) (4th Cir. 1997).

a result of materials found in his stool. Again on November 29, 1997, he was placed in an observation cell following a contact visit and subsequently received a misconduct based on allegations of drug trafficking. In addition, on September 28, 1998, he received a misconduct based on a urine analysis from a sample that was taken on September 17, 1998. Plaintiff received ninety (90) days of disciplinary confinement as a result of each of the misconducts. He claims that the misconducts are interfering with his contact visitation and he seeks expungement and damages.

C. Liability under 42 U.S.C. § 1983

To state a claim under 42 U.S.C. § 1983, a plaintiff must meet two threshold requirements. He must allege: 1) that the alleged misconduct was committed by a person acting under color of state law; and 2) that as a result, he was deprived of rights, privileges, or immunities secured by the Constitution or laws of the United States. West v. Atkins, 487 U.S. 42 (1988); Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled in part on other grounds*, Daniels v. Williams, 474 U.S. 327, 330-331 (1986).

Plaintiff alleges that Defendant violated his due process rights due to the fraudulent misconduct reports. To succeed on his claim, Plaintiff must show the following two conditions: 1) he has a liberty interest that was impacted by his confinement in disciplinary custody; and 2) he did not receive the process that he was due in order to place him in disciplinary custody.

In Sandin v. Conner, 515 U.S. 472 (1995), the Supreme Court

announced a new standard for determining whether prison conditions deprive a prisoner of a liberty interest that is protected by procedural due process guarantees. Specifically, the Supreme Court held that an inmate does not have a protectable liberty interest unless the conditions of his confinement result in an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* 515 U.S. at 483 (emphasis added).

At issue in Sandin was whether the plaintiff's thirty-day detention in disciplinary custody in a Hawaii prison impacted any protectable liberty interest under the Fourteenth Amendment. The Supreme Court concluded that the prisoner in Sandin did not have a protected liberty interest in remaining free of disciplinary detention or segregation because his thirty-day disciplinary detention, though punitive, did not present a dramatic departure from the basic conditions of his sentence.

As a result of the misconduct reports, Plaintiff received three separate sanctions of 90 days of disciplinary custody. Employing the due process analysis announced in Sandin, the federal courts, including the United States Court of Appeals for the Third Circuit, have concluded that placement in restrictive confinement for periods of up to one year, and more, does not trigger a constitutionally protected liberty interest as it does not constitute an atypical and significant hardship in relation to the ordinary incidents of prison life. See, e.g., Griffin v. Vaughn, 112 F.3d 703 (3d Cir. 1997) (it is not atypical to be exposed to conditions of administrative custody for periods as long as

15 months as such stays are within the expected parameters of an inmate's sentence); Mackey v. Dyke, 111 F.3d 460 (Unpublished Disposition), 1997 WL 179322 (6th Cir. 1997) (thirteen month detention in administrative segregation did not create a liberty interest), *cert. denied*, 118 S.Ct. 136 (Oct. 6, 1997); Williams v. Craigie, 110 F.3d 66 (Unpublished Disposition), 1997 WL 144240 (6th Cir. 1997) (at least thirteen months - no liberty interest); Jones v. Fields, 104 F.3d 367 (Unpublished Disposition), 1996 WL 731240 (10th Cir. 1996) (a plaintiff housed for fifteen months in administrative segregation failed to establish a liberty interest).

Under this authority, this Court should conclude that the Plaintiff's disciplinary detention did not impose an atypical and significant hardship in relation to the ordinary incidents of his prison sentence sufficient to give rise to a protected liberty interest.

D. False Misconduct Reports

Plaintiff also alleges that his constitutional rights were violated by the filing of false misconduct reports, which resulted in his disciplinary custody in the RHU. A prisoner does not have a constitutional right to be free from being falsely or wrongly accused of conduct that may result in the deprivation of a protected liberty interest. Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986), *cert. denied*, 485 U.S. 982 (1988). In other words, the mere filing of false charges against an inmate does not constitute a *per se* constitutional violation. *Id.* Before the

Supreme Court handed down its opinion in Sandin, the federal courts had determined that the filing of unfounded administrative charges against an inmate may result in a procedural due process violation only when such charges were not subsequently reviewed in a misconduct hearing. *Id.* at 952 (an allegation that a prison guard planted false evidence fails to state a claim where the procedural due process protections as required in Wolff v. McDonnell are provided) (citation omitted). Thus, even if false charges impaired a protected liberty interest, as long as prison officials granted the inmate a hearing and an opportunity to be heard, the filing of unfounded charges did not give rise to a procedural due process violation actionable under section 1983. *Accord Jones v. Coughlin*, 45 F.3d 677 (2d Cir. 1995); Franco v. Kelly, 854 F.2d 584, 587 (2d Cir. 1988); McClellan v. Seclor, 876 F. Supp. 695 (E.D. Pa. 1995).

In light of the Supreme Court's ruling in Sandin, however, Plaintiff has not even demonstrated that he had a constitutionally protected liberty interest that was offended by Defendant's actions. Thus, it is unlikely that the filing of false charges, even in the absence of a misconduct hearing, would state a constitutional claim on the facts before this Court. *See Strong v. Ford*, 108 F.3d 1386 (Unpublished Opinion), 1997 WL 120757 (9th Cir. 1997) (the alleged making of a false charge, however reprehensible or violative of state law or regulation, does not constitute deprivation of a federal right protected by 42 U.S.C. § 1983 when

it does not result in the imposition of an atypical hardship on the inmate in relation to the ordinary incidents of prison life).

E. Contact Visits

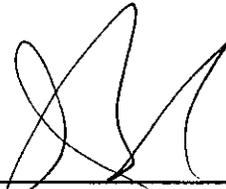
In addition, Plaintiff's complaint about visiting privileges raises no constitutional concerns. The Constitution does not mandate specific visitation privileges for either pretrial detainees or convicted criminals. See Block v. Rutherford, 468 U.S. 576, 586 (1984) (county jail's blanket prohibition against contact visits between pretrial detainees and their spouses, relatives, children, and friends was an entirely reasonable, non-punitive response to legitimate security concerns and was consistent with the Fourteenth Amendment--"That there is a valid rational connection between a ban on contact visits and internal security of a detention facility is too obvious to warrant discussion."); Ramos v. Lamm, 639 F.2d 559, 580 n.26 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981) ("weight of present authority clearly establishes that there is no constitutional right to contact visitation . . . we agree with this view."); Lynott v. Henderson, 610 F.2d 340, 342 (5th Cir. 1980) ("convicted prisoners have no absolute constitutional right to visitation"); Peterkin v. Jeffes, 661 F. Supp. 895, 913-914 (E.D. Pa. 1987) ("the weight of authority concludes that a ban on contact visits for convicted persons does not run afoul of the Eighth Amendment"), *modified*, 855 F.2d 1021 (3d Cir. 1988). Thus, mere restriction in visitation privileges does not rise to constitutional significance.

Accordingly, Plaintiff's Complaint should be dismissed on the basis that it fails to state a claim upon which relief may be granted under 42 U.S.C. § 1983.

III. CONCLUSION

It is recommended that Plaintiff's complaint be dismissed in accordance with the Prison Litigation Reform Act, 28 U.S.C. § 1915(e)(2)(B)(ii) and/or 28 U.S.C. § 1915A.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule 72.1.4 B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to timely file objections may constitute a waiver of any appellate rights.



ILA JEANNE SENSENICH
U.S. Magistrate Judge

Dated: October 1, 1999

cc: The Honorable Donald E. Ziegler, Chief Judge
United States District Court

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