

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

JAMAL BENNETT, : CIVIL NO. 3:CV-04-1247
Plaintiff :
 : (Judge Munley)
v. :
 :
JEFFREY BEARD, ET AL., :
Defendants :

.....

MEMORANDUM AND ORDER

Plaintiff, Jamal Bennett ("Bennett") is presently proceeding with this 42 U.S.C. § 1983 action *via* an amended complaint. (Doc. 51). Ripe for disposition is defendants' motion to dismiss. (Doc. 59). For the reasons set forth below, the defendants' motion will be held in abeyance.

I. Allegations of the amended complaint

Bennett alleges that his placement in the Restricted Housing Unit for over a year, and the conditions he endured while incarcerated at the State Correctional Institution at Huntingdon, violated the First, Sixth, Eighth and Fourteenth Amendments. He claims that he was denied food trays for three weeks, denied "yard" for one month, that his mail was interfered with, and that items were illegally confiscated from his cell. He also alleges that his family was continuously harassed by staff

He contends that his First, Eighth, Fourth and Fourteenth Amendment rights were violated when he was given "fabricated misconducts," and, also, when he was subjected to irregular disciplinary proceedings. (Doc. 51, pp. 2, 3).

He further contends that the placement of a "violent mental patient" in his cell violated

his First, Eighth and Fourteenth Amendments. He alleges that he was assaulted by the cellmate and knocked unconscious, and that his complaints about the cellmate resulted in a retaliatory transfer to a correctional facility "on the other side of the state." (Doc. 51, pp. 2, 3).

II. Standard of Review

When evaluating a motion to dismiss, the court must accept all material allegations of the complaint as true and construe all inferences in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). A complaint should not be dismissed for failure to state a claim unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 44-46 (1957); Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988). A complaint that sets out facts which affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. Estelle v. Gamble, 429 U.S. 97, 107-108 (1976).

III. Discussion

Defendants seek dismissal of the complaint because the plaintiff has not pled, with appropriate particularity, defendants' personal involvement. To state a viable claim under 42 U.S.C. § 1983, the plaintiff must allege that the defendant, while acting under color of state law, deprived the plaintiff of a right, privilege or immunity secured by the Constitution of the United States. See 42 U.S.C. § 1983; see also, West v. Atkins, 487 U.S. 42, 48 (1988). "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). Each defendant

must have been personally involved in the events or occurrences which underlie a claim. See Atkinson v. Taylor, 316 F.3d 257 (3d Cir. 2003); Rizzo v. Goode, 423 U.S. 362 (1976); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3d Cir. 1976). Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity. Rode, 845 F.2d at 1207-08.

Defendants argue as follows:

Bennett does not allege any particular actions or conduct on the part of any of the Defendants that would rise to the level of personal involvement needed to argue a claim under Section 1983. Specifically, none of the Defendants are mentioned at all in the Amended Complaint. Thus, Bennett failed to even allege that these Defendants had any personal involvement in his alleged claims or that they knew of, or consented, to any of the incidents cited by Bennett in his Amended Complaint.

(Doc. 60, p. 5). The court agrees. Consequently, plaintiff will be afforded an opportunity to file a second amended complaint to cure the identified deficiencies.

In addition, plaintiff will be directed to file an amended pleading which strictly adheres to the mandates of Federal Rule of Civil Procedure 20, Permissive Joinder of Parties, which reads, in pertinent part:

(A) Permissive Joinder. "All persons may. . . be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given against . . . one or more of the defendants according to their respective abilities.

FED.R.CIV.P. 20(a). Although Rule 20 is a flexible rule that allows fairness and judicial economy, the rule only permits "joinder in a single action of all persons asserting, or defending against, a joint, several, or alternative right to relief that arises out of the same transaction or occurrence and presents a common question of law or fact." 7 Charles Allen Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure* §1652 at 371-72 (1986). "Permissive joinder is not, however, applicable in all cases. The rule imposes two specific requisites to the joinder of parties: (1) a right to relief must be asserted by, or against, each plaintiff or defendant relating to or arising out of the same transaction or occurrence, or series of transactions or occurrences; and (2) some question of law or fact common to all the parties must arise in the action." Mosley v. General Motors Corp., 497 F.2d 1330, 1333 (8th Cir.1974).

Plaintiff is strictly cautioned that the second amended complaint must comply with Rule 20 and involve only related claims or parties.¹ "It must be a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed." Young v. Keohane, 809 F. Supp. 1185 (M.D.Pa. 1992). Further, Plaintiff will be required to utilize the court's form complaint in filing his second amended complaint.

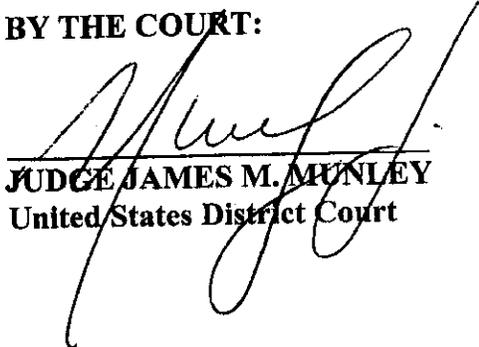
AND NOW, to wit, this 17th day of January 2006, IT IS HEREBY

¹The Prison Litigation Reform Act of 1995 ("PLRA"), which substantially changed the judicial treatment of civil rights actions by state and federal prisoners, also compels compliance with Rule 20. Specifically, under the PLRA the full filing fee must ultimately be paid in a non-habeas action. Allowing a prisoner to include a plethora of separate, independent claims, would circumvent the filing fee requirements of the PLRA. Thus, to the extent that plaintiff believes that he has been subjected to more than one violation of his rights, and to the extent that these violations are unrelated to each other, plaintiff should file separate complaints addressing each violation.

ORDERED that:

1. The Clerk of Court is directed to forward to plaintiff a civil rights form complaint.
2. Plaintiff shall file a second amended complaint, utilizing the enclosed civil rights form, on or before February 3, 2006.
3. The Amended Complaint shall contain the same caption and number as is already assigned to this action and shall be direct, concise, and shall stand alone without reference to any other document filed in this matter.
4. Defendants' motion to dismiss (Doc. 59-1) is HELD IN ABEYANCE.
5. Failure to file an amended complaint within the specified time period will result in the motion to dismiss being granted and dismissal of the action in its entirety.

BY THE COURT:


JUDGE JAMES M. MUNLEY
United States District Court

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

JAMAL BENNETT,	:	CIVIL NO. 3:CV-04-1247
Plaintiff	:	
	:	(Judge Munley)
v.	:	
	:	
JEFFREY BEARD, ET AL.,	:	
Defendants	:	

.....

ORDER

AND NOW, to wit, this 1st day of February 2006, in accordance with this Court's Memorandum and Order (Doc. 69) wherein defendants' motion to dismiss (Doc. 59-1), which identified deficiencies in plaintiff's amended complaint,¹ was held in abeyance, and plaintiff was directed to file an amended complaint on or before February 3, 2006, and plaintiff having been warned that his failure to file and amended complaint within the specified time period would result in the motion to dismiss being granted and dismissal of the action in its entirety, and it appearing that plaintiff has failed to file an amended complaint, and the time period for doing so has expired, **IT IS HEREBY ORDERED** that:

1. For the reasons set forth in this Court's Memorandum and Order (Doc. 69), defendants' motion to dismiss (Doc. 59-1) is GRANTED.

¹Defendants argued as follows:

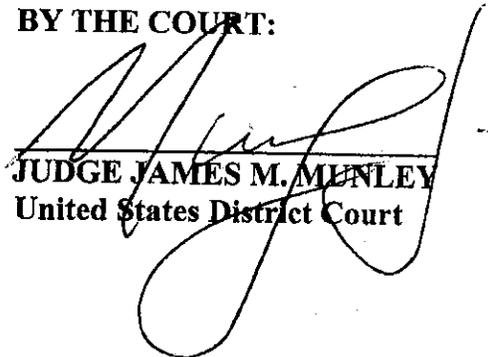
Bennett does not allege any particular actions or conduct on the part of any of the Defendants that would rise to the level of personal involvement needed to argue a claim under Section 1983. Specifically, none of the Defendants are mentioned at all in the Amended Complaint. Thus, Bennett failed to even allege that these Defendants had any personal involvement in his alleged claims or that they knew of, or consented, to any of the incidents cited by Bennett in his Amended Complaint.

(Doc. 60, p. 5). The court agreed, but afforded Bennett the opportunity to amend. (Doc. 69, p. 3).

2. The Clerk of Court is directed to CLOSE this action.

3. Any appeal from this Order will be deemed frivolous, not taken in good faith and lacking in probable cause.

BY THE COURT:



JUDGE JAMES M. MENLEY
United States District Court