UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAMEON BROME,
Plaintiff

v. CIVIL NO. 3:CV-94-1134

WILLIAM J. LOVE, et al.,
Defendants

ORDER

BEFORE THE COURT is the Report and Recommendation of United States Magistrate Judge Raymond J. Durkin, dated January 4, 1995, which recommends that the defendants' motion for summary judgment be granted. After conducting an independent review of the record, and noting that no objections have been filed, the court will adopt the Report.

ACCORDINGLY, this 31st day of January, 1995, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of United States Magistrate Judge Raymond J. Durkin is ADOPTED.

(2) The defendants' motion for summary judgment is GRANTED.

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

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

United States District Judge

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

DAMEON BROME,	:	
Plaintiff	:	
v.	:	CIVIL ACTION NO. 3:94-1134
WILLIAM J. LOVE, et al.,	:	(NEALON, J.)
Defendants	:	(DURKIN, M.J.).

REPORT AND RECOMMENDATION

This case is before the court on the defendants' motion for summary judgment. (Doc. No. 11).

The plaintiff, an inmate at the State Correctional Institution, Huntingdon, PA, filed this civil rights action pursuant to 42 U.S.C. § 1983 alleging a violation of his right to due process arising out of a deduction from his inmate account to reimburse medical costs assessed through institutional misconduct proceedings following the SCI-Camp Hill riots in 1989. Named as defendants are William J. Love, Superintendent, SCI-Huntingdon; W.C. Biller, Inmate Accounting Supervisor, SCI-Huntingdon; and Captain C.H. Kyle, Intelligence Captain, SCI-Huntingdon. Financial information having been received, the plaintiff was permitted to proceed in forma pauperis and process was issued. (Doc. No. 6). On September 12, 1994, the defendants filed an answer to the complaint. (Doc. No. 10).

On November 29, 1994, the defendants filed a motion for summary judgment, a statement of material facts and a brief in support of said motion along with supporting affidavits and documentation. (Doc. Nos. 11 & 12).

Although the plaintiff was advised by standing practice order dated July 19, 1994, of the procedures to be followed in responding to motions filed in this case, and the consequences of failing to do so , (Doc. No. 3), as of the date of this report, the plaintiff has neither filed a brief in opposition to the defendants' motion for summary judgment, nor requested an extension of time within which to do so. Thus, the plaintiff has failed to properly oppose the defendants' motion for summary judgment.

It is noted, however, that the defendants' motion for summary judgment is well-taken. The plaintiff states that he "arrived at SCI-Huntingdon on 3-16-92 and was remanded to the RHU (Restricted Housing Unit)". He states that "after spending a year in the RHU at the State Correctional Institution at Huntingdon, [he] was released into general population where [he] received the first inmate idle pay". The plaintiff alleges that his idle pay was "cut in half due to the 'holding plan' that the institution failed to specify on the monthly statement exactly what this holding plan consisted of". (Doc. No. 1).

The plaintiff states that he submitted a "request to the accounting department" and "they informed [him] that it was a medical bill for a Camp Hill Officer (Thomas E. Campbell) who was injured during the Riot at Camp Hill of 1989". The plaintiff claims that he was "tryed (sic) in a court of law and all the charges were droped (sic) but [he] was charged with riot only". He states that he "filed a grievance in reply to the 'holding plan' and the grievance coordinator (Mr. Grove) dismissed the grievance

stat[ing] that it had no merit also he claims that this was not a grievance matter". (Id.).

Thus, the plaintiff filed the instant action in which he claims that the defendant "prison officials are violating his due process clause". He "ask[s] this honorable Court to issue an injunction preventing the officials at SCI-Huntingdon from taking money off of [his] prison account without due process of the law, just as justice so requires and if the cause comes to court [he] will be seeking the return of any and all money that was taken off of the plaintiff's account as of this date of filing this civil action". (Id.).

To pierce these allegations, the defendants have submitted a statement of facts and supporting affidavits and documentation, which have not been controverted by the plaintiff, as required by Fed.R.Civ.P. 56(e), and which indicate that a riot occurred at the State Correctional Institution at Camp Hill (SCI-Camp Hill) on October 25-27, 1989. On October 5, 1990, C.O. Rhoades filed Misconduct Report #373890 against Dameon Brome, AS-2316, for actions arising out of the riot. The Misconduct Report charged Brome with riot, aggravated assault, assault by life prisoner, kidnapping, unlawful restraint, possession of contraband and presence in an unauthorized area. The plaintiff was served notice of the Misconduct Report, was given forms to request witnesses and representation and was given an inmate's version form. He requested and was granted two witnesses for the disciplinary hearing. (Doc. No. 11, Statement of Facts).

At the hearing, the plaintiff submitted an inmate statement and C.O. Campbell submitted an affidavit as his testimony. Examiner Libhart, in his written findings of fact, stated that he "does not believe that Brome did not participate in the hostage taking or holding or assault upon either all or one of C.O.'s S. Allen and Maurer and C.O. Campbell." Examiner Libhart wrote that he believed C.O. Rhoades' report over the denials of the plaintiff and found the plaintiff guilty of all charges. Libhart then assessed the plaintiff's account for the fair share of the costs of medical treatment to C.O. Campbell. The plaintiff refused to sign the cash slip for those costs to be assessed against his account. (Id.).

The plaintiff appealed the guilty decision on Misconduct #373890 on the ground that the evidence was insufficient to support the decision. On November 6, 1990, the Program Review Committee sustained the decision of the Hearing Examiner. On December 4, 1990, the plaintiff was given notice of the assessment of his account in the amount of $19,544.00. The plaintiff was also notified that he had seven (7) days to appeal the amount of the assessment in accordance with departmental directive DC-ADM 804. (Id.).

The plaintiff filed official inmate grievances on January 25, 1991 and on May 26, 1991 pertaining to the assessment of his account. The former grievance stated that the plaintiff did not receive any notification from outside courts that he should pay these fines. Grievance Officer Palakovich replied that the

sanction was appropriate and within the guidelines of DC-ADM 801. The latter grievance challenged the appropriateness of the assessment. Mr. Palakovich again responded that the assessment was appropriate, as pointed out in his response to grievance #91-192 on January 25, 1991. (Id.).

The plaintiff filed yet another official inmate grievance at SCI-Huntingdon on October 14, 1993 regarding the assessment against his account. On October 15, 1993, grievance coordinator Diana Baney responded to the plaintiff that initial reviews must be submitted within 30 calendar days after the events upon which claims are based. Thus, the response stated that the plaintiff's complaint was not a grievable issue at that point. (Id.).

In Wilson v. Garcia, 471 U.S. 261 (1985), the Supreme Court held that § 1983 actions are governed by "the one most appropriate statute of limitations [in each state's laws] for all § 1983 claims." The Court later added that "all § 1983 claims should be characterized by statute of limitations purposes as actions to recover damages for injuries to the person." Springfield Tp. School Dist. v. Knoll, 471 U.S. 288 (1985). Thus, § 1983 actions instituted in Pennsylvania are governed by the two-year limitations period for personal injury actions set forth in 42 Pa. Cons. Stat. Ann. § 5524. Knoll v. Springfield Tp. School Dist., 763 F.2d. 584 (3d Cir. 1985).

All of the incidents alleged to support the plaintiff's claims took place more than two years prior to the filing of the complaint. The riot at SCI-Camp Hill, out of which the allegations

of misconduct arose, took place between October 25 and 27, 1989. The disciplinary hearing on misconduct report #373890 occurred on October 11, 1990, at which the plaintiff was found guilty of all charges against him and at which costs were assessed in an amount to be determined by SCI-Camp Hill. On October 15, 1990, a cash slip was signed by the hearing examiner assessing the plaintiff's account for damages. On November 6, 1990, the plaintiff's appeal of misconduct #373890 was sustained by the Program Review Committee. On December 4, 1990, the plaintiff's inmate account was assessed $19,544.00 for misconduct #373890.

The plaintiff did not file an official inmate grievance until January 25, 1991, claiming a lack of notification from an outside court for the deduction of money from his inmate account in satisfaction of the $19,544.00 assessment. On January 28, 1991, Grievance Officer Palakovich responded that the sanction was appropriate within institution guidelines and was based upon actual medial bills received in the institution. Therefore, Grievance Officer Palakovich found no reason to change the assessment at that time. On May 26, 1991, the plaintiff filed another inmate grievance pertaining to the assessment of his account. On May 30, 1991, Mr. Palakovich again responded that the assessment was appropriate.

On October 14, 1993, the plaintiff filed another inmate grievance regarding the deduction of funds from his inmate account in satisfaction of the $19,544.00 assessment. On October 15, 1993, Grievance Coordinator D.G. Baney responded to the plaintiff that

initial reviews must be submitted within 30 calendar days after the events upon which the claims are based. This response stated that the plaintiff's complaint was not a grievable issue at that point. Thus, the plaintiff's attempt to revive the issue almost four years after it arose does not salvage the limitations period to save his claim. The plaintiff reasonably knew of the action complained of on December 4, 1990, when his inmate account was assessed $19,544.00 for misconduct #373890. Thus, at the very latest, the plaintiff's complaint would have had to be filed on or before December 4, 1992, in order to avoid dismissal based on the applicable statute of limitations. Thus, the plaintiff's action is barred by the two-year statute of limitations and should be dismissed.

Even if the plaintiff's action were not time-barred, on the factual record of this matter, it is clear not only that the plaintiff was afforded all the procedural due process mandated by Wolff v. McDonnell[1], 418 U.S. 539, 556 (1974), but also that there was ample support for the hearing examiner's decisions[2].

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1. Due process requires that a prisoner at a disciplinary proceeding be given advance written notice of the disciplinary charges; an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. Wolff, 418 U.S. at 563-67; Superintendent v. Hill, 472 U.S. 445, 454 (1985).

2. A disciplinary hearing decision implicating a prisoner's liberty interest must be supported by at least "some" evidence. Superintendent v. Hill, 472 U.S. at 455. In determining whether the "some evidence" standard has been met, the reviewing court must simply determine "whether there is any evidence in the

(continued...)

In this case, it is undisputed that a written misconduct report charging the plaintiff with riot, aggravated assault, assault by a life prisoner, kidnapping, unlawful restraint, possession of contraband and presence in an unauthorized area which detailed the facts underlying the charges was prepared and served on the plaintiff. It is also undisputed that a hearing with respect to the misconduct report was held on October 11, 1990, at which time the plaintiff provided testimony from two witnesses and an inmate's version statement. Hearing Examiner L.L. Libhart found the plaintiff guilty of all charges based upon the witness sheet, the inmate's version, and the affidavit of C.O. Campbell. As a sanction, the cost of the fair share of medical treatment of C.O. Campbell was assessed against the plaintiff with costs to be determined by the institution as authorized by DC-ADM 801. In accordance with the policy that when a prisoner refuses to sign a cash slip, as in the plaintiff's case, the hearing examiner signed the slip. (Doc. No. 12, Attachment 3, Affidavit of Hearing Examiner Lamar L. Libhart).

It is clear that a hearing on the misconduct was held, at the conclusion of which a written statement was prepared describing the conduct of which the plaintiff was disciplined, summarizing the sanction imposed on him, and describing the basis for the decision. It is clear from the written statement that credence was given to the misconduct report and supporting affidavit which constituted

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2. (...continued)
record that court support the conclusion reached by the disciplinary board." Id. at 455-456.

"some evidence" that the plaintiff had committed the seven allegations against him. The hearing examiner concluded that the misconduct report and affidavit were more credible than plaintiff's testimony. (Id.). Accordingly, the plaintiff was afforded the process to which he was entitled prior to the removal of the funds from his prison account[3]. Thus, the defendants' motion for summary judgment should be granted.

On the basis of the foregoing,

IT IS RESPECTFULLY RECOMMENDED THAT

the defendants' motion for summary judgment (Doc. No. 11), be granted.

RAYMOND J. DURKIN
United States Magistrate Judge

Dated: January 4, 1995

3. In Moss v. Ryan, Civil No. 88-1900 (M.D. Pa. Nov. 13, 1989), appeal dismissed, No. 89-5953 (3d Cir. Jan. 31, 1990), the Court determined that the procedural due process required to impose a disciplinary sanction is all that is required for the institution to obtain reimbursement from inmates for the damages they caused. Slip op. at 8-10. See also Barrage v. Conrad, Civil No. 88-0251 (M.D. Pa. June 28, 1988). (See Doc. No. 12 for copies of these two unreported opinions).

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAMEON BROME,	:	
Plaintiff	:	
v.	:	**CIVIL ACTION NO. 3:94-1134**
WILLIAM J. LOVE, et al.,	:	**(NEALON, J.)**
Defendants	:	**(DURKIN, M.J.).**

NOTICE

TO: **Dameon Brome, AS-2316**
SCI-HUNTINGDON
1100 Pike Street
Huntingdon, PA 16654-1112

Gregory R. Neuhauser, Sr. Deputy Attorney General
OFFICE OF ATTORNEY GENERAL
15th Floor--Strawberry Square
Harrisburg, PA 17120

NOTICE IS HEREBY GIVEN that the undersigned has entered the following: **Report and Recommendation of Magistrate Judge Durkin dated 01/04/95.**

Any party may obtain a review of the magistrate judge's above proposed determination pursuant to Rule **72.31**, M.D.PA, which provides: **72.31 Review of Case-Dispositive Motions and Prisoner Litigation - 28 U.S.C. Sec. 636(b)(1)(B).**

Any party may object to a magistrate judge's proposed findings, recommendations, or report, under subsections 72.4, .5, and .6 of these rules, supra, within ten (10) days after being served with a copy thereof. Such party shall file with the Clerk of Court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Rule 72.30 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in

his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions.

RAYMOND J. DURKIN
United States Magistrate Judge

Dated: January 3, 1995

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:94-cv-01134 Brome v. Love

True and correct copies of the attached were mailed by the clerk to the following:

Gregory R. Neuhauser, Esq.
Office of Attorney General
Strawberry Square
15th Floor
Harrisburg, Pa 17120

Dameon Brome
SCI-H
SCI at Huntingdon
Drawer R
1100 Pike Street
Huntingdon, PA 16654-1112

cc:

Judge	( )	
Magistrate Judge	( )	
U.S. Marshal	( )	
Probation	( )	
U.S. Attorney	( )	
Atty. for Deft.	( )	
Defendant	( )	
Warden	( )	
Bureau of Prisons	( )	
Ct Reporter	( )	
Ctroom Deputy	( )	
Orig-Security	( )	
Federal Public Defender	( )	
Summons Issued	( )	with N/C attached to complt. and served by: U.S. Marshal ( ) Pltf's Attorney ( )
Standard Order 93-5	( )	
Order to Show Cause	( )	with Petition attached & mailed certified mail to: US Atty Gen ( ) PA Atty Gen ( ) DA of County ( ) Respondents ( )
Other_____	( )	

LANCE S. WILSON, Clerk

DATE: 1/4/95

BY: KCW
Deputy Clerk