



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

PURCELL BRONSON, :  
 : CIVIL ACTION NO. 3:CV-98-0630  
 Plaintiff, :  
 :  
 vs. :  
 : (JUDGE CAPUTO)  
 RALPH J. EVANS, et al., :  
 : FILED  
 Defendants. : SCRANTON  
 :  
 : APR 20 1999

PER   
DEPUTY CLERK

MEMORANDUM

Plaintiff, a state prisoner at SCI-Dallas, commenced the present civil rights action under 42 U.S.C. § 1983 on April 16, 1998. (Doc. No. 1). Plaintiff filed an amended complaint on September 2, 1998. (Doc. No. 13). The nine named defendants are as follows: defendant Larkins is the Superintendent at SCI-Dallas; defendant Burnett is the Assistant to the Superintendent at SCI-Dallas; defendant Bitner is the Chief Hearing Officer for the Pennsylvania Department of Corrections; defendant Jones is a hearing examiner for the Pennsylvania Department of Corrections; defendant Feeley is a registered nurse at SCI-Dallas; and defendants Evans, Adamitz, Smith and Long are corrections officers at SCI-Dallas. On September 17, 1998, defendants filed a motion to dismiss the amended complaint. (Doc. No. 15). On December 8, 1998, Magistrate Judge J. Andrew Smyser filed a Report and Recommendation that defendants' motion to dismiss be granted. (Doc. No. 24). Under Local Rule 72.3, either party has ten (10) days to file objections to a Magistrate Judge's Report and Recommendation. Plaintiff filed

objections to the Report and Recommendation. (Doc. No. 25). Because I agree with the findings of the Magistrate Judge that plaintiff has failed to state a claim upon which relief can be granted, I will adopt the Report and grant defendants' motion to dismiss.

#### BACKGROUND

The allegations in plaintiff's amended complaint are as follows. On February 16, 1998, defendants Adamitz, Long and Evans refused to transport plaintiff to his outside hospital appointment because plaintiff refused an order to place his hands in his mouth during a strip search. (Amended Compl. ¶ 2). While escorting plaintiff back to his cell, defendants Adamitz, Long and Evans threatened plaintiff with bodily harm if he again sought medical treatment or filed any legal action. Id. ¶ 4. These defendants issued a false misconduct report alleging that plaintiff disobeyed an order. Id. ¶ 5. Defendants also placed a false refusal of medical treatment form in plaintiff's record. Id. ¶ 6. As a result of the misconduct report, plaintiff was subjected to 60 days of disciplinary confinement. Id. ¶ 7. At the disciplinary hearing, defendant Jones refused to note plaintiff's questions, stating that the questions were not relevant. Id. ¶ 8. Plaintiff alleges that defendants Adamitz, Long and Evans deprived him of needed medical treatment, thereby subjecting plaintiff to unnecessary pain to his eyes. Id. ¶ 10. Plaintiff further alleges that he has suffered stress and anxiety as a result of defendants conduct, leading him to experience insomnia, loss of appetite, hair loss, chest pain, high blood pressure and migraine headaches. Id. ¶ 11. Plaintiff claims that defendants Adamitz, Long, Evans and Jones violated his First Amendment right to petition the government for redress

without fear of retaliation, his Fourteenth Amendment equal protection rights and his Eighth Amendment right to be free from cruel and unusual punishment. Id. ¶ 13.

On May 6, 1998, defendant Smith seized plaintiff's doctor-ordered and approved skin ointments, liquid eye drops and ankle braces. Id. ¶ 14. Plaintiff claims that defendant Smith seized these items in retaliation for plaintiff's filing of the present action. Id. ¶ 15. Plaintiff contends that after he filed a grievance concerning the confiscated medication, defendant Burnett ordered the prison medication department to destroy plaintiff's medication and retain his ankle braces. Id. ¶ 16. On May 19, 1998, defendant Feeley destroyed plaintiff's medication. Id. ¶ 17. On May 20, 1998 and June 16, 1998, defendants Larkins and Bitner "condoned and approved of the actions of Smith, Burnett and Feeley." Id. ¶ 18. Plaintiff alleges that defendants acted with malicious intent to subject him to unnecessary pain and suffering by interfering with his doctor-ordered treatment regimen. Id. ¶ 19. On August 5, 1998, defendant Jones conducted a hearing on a misconduct issued to plaintiff. Id. ¶ 20. Plaintiff contends that defendant Jones ignored plaintiff's legal arguments and sentenced him to 30 days disciplinary confinement. Id. Plaintiff alleges that defendant Jones told him, "If you hadn't filed that suit, I might have been a little more considerate, but you did it to yourself." Id. ¶ 21. Plaintiff avers that had defendant Jones not been biased and had not acted with retaliatory intent, the misconduct report would have been dismissed for being in violation of department regulations. Id. ¶ 23. Plaintiff seeks compensatory and punitive damages as well as declaratory and injunctive relief.

## STANDARD OF REVIEW

When objections are filed to a Report and Recommendation of a Magistrate Judge, the court must make a de novo determination of those portions of the Report to which objections are made. 28 U.S.C. § 636(b)(1)(C); Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); Owens v. Beard, 829 F. Supp. 736, 738 (M.D. Pa. 1993). The court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); Owens, 829 F. Supp. at 738. Although the review is de novo, the court is permitted by statute to rely on the Magistrate Judge's proposed recommendations to the extent the court, in the exercise of sound discretion, deems proper. United States v. Raddatz, 447 U.S. 667, 676, 100 S. Ct. 2406, 2413 (1980); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984); Ball v. United States Parole Commission, 849 F. Supp. 328, 330 (M.D. Pa. 1994).

## DISCUSSION

### I. Claims Against Defendants Adamitz, Long and Evans

Plaintiff objects to the Magistrate Judge's finding that plaintiff failed to state a claim under the Eighth Amendment for deliberate indifference to his serious medical needs. In order to state a claim under 42 U.S.C. § 1983 for a violation of the Eighth Amendment based on lack of medical care, a plaintiff must allege that a defendant acted under color of state law and with deliberate indifference to the serious medical needs of the plaintiff while a prisoner. Estelle v. Gamble, 429 U.S. 97 (1976). The Magistrate Judge found that because plaintiff was scheduled to see an eye specialist, he had alleged a serious medical need. (Rep. and Recommendation at 8). Nevertheless, the Magistrate

Judge found that plaintiff's Eighth Amendment claim against defendants Adamitz, Long and Evans should be dismissed because plaintiff failed to allege any facts to support his contention that defendants acted with deliberate indifference to his serious medical need. Id. The Magistrate Judge found that plaintiff's allegations clearly showed that defendants Adamitz, Long and Evans refused to transport plaintiff to his hospital appointment because plaintiff refused to comply with their order to place his hands in his mouth during the strip search. Id. Based on the allegations in plaintiff's complaint, I find that plaintiff has failed to state a claim under the Eighth Amendment for deliberate indifference. I therefore will adopt the Report and dismiss plaintiff's Eighth Amendment claim against defendants Adamitz, Long and Evans.

Plaintiff further objects to the Magistrate Judge's finding that the order given by defendants to plaintiff to place his hands in his mouth was not a violation of plaintiff's Fourteenth Amendment equal protection rights. The Magistrate Judge found that plaintiff had not alleged a violation of a fundamental right, nor was plaintiff a member of a suspect class. (Rep. and Recommendation at 8). The Magistrate Judge therefore found that if there was a rational relationship between the alleged disparity of treatment and some legitimate government purpose, plaintiff's equal protection rights were not violated. Id. at 9 (citing Heller v. Doe, 509 U.S. 312, 319-20 (1993)). The application of the rational basis test is objective, and does not involve a factual inquiry into the motivation behind the classification. Heller, 509 U.S. at 320. In the present action, defendants Adamitz, Long and Evans averred that they required plaintiff to place his fingers in his mouth as a security precaution in order to verify that plaintiff was not concealing

contraband in his mouth. The Magistrate Judge found that defendants had presented a rational basis for their order to plaintiff, and therefore plaintiff's equal protection claim should be dismissed. I agree. Accordingly, plaintiff's Fourteenth Amendment equal protection claim against defendants Adamitz, Long and Evans will be dismissed.

Plaintiff objects to the Magistrate Judge's finding that defendants did not issue a false misconduct report in retaliation for plaintiff's statement that he would file a grievance against defendants. After plaintiff failed to obey the order to place his hands in his mouth, defendants filed a misconduct report. As a result, plaintiff was sanctioned with 60 days of disciplinary custody. The Magistrate Judge found that plaintiff failed to state a claim upon which relief could be granted because placing plaintiff in disciplinary confinement is not a violation of the Fourteenth Amendment. (Rep. and Recommendation at 12) (citing Sandin v. Conner, 515 U.S. 472 (1995)). The Magistrate Judge also found that the misconduct report was not false because the allegations in the amended complaint showed that plaintiff failed to obey defendants' order. Id. Finally, the Magistrate Judge found that plaintiff's retaliation claim should be dismissed because the allegations were conclusory. (Rep. and Recommendation, pp. 12, 13). In order to state a claim for retaliation, a plaintiff must establish that: (1) he engaged in a protected activity; (2) he was subjected to adverse actions by a state actor; and (3) his protected activity was a substantial motivating factor in the state actor's decision to take adverse action. Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997). In the present action, the Magistrate Judge found that plaintiff failed to allege that he engaged in any protected activity for which there was retaliation. A complaint which alleges retaliation in wholly

conclusory terms may be dismissed on the pleadings alone. Flaherty v. Coughlin, 713 F.2d 10, 13 (2d Cir. 1983) (“In such a case, the prisoner has no factual basis for the claim other than an adverse administrative decision and the costs of discovery should not be imposed on defendants.”). The Magistrate Judge therefore concluded that plaintiff had failed to state a claim under the Fourteenth Amendment. I agree. Accordingly, plaintiff’s Fourteenth Amendment due process claim against defendants Adamitz, Long and Evans will be dismissed.

## II. Claims Against Defendant Jones

Plaintiff objects to the Magistrate Judge’s recommendation that the claims against defendant Jones be dismissed. Plaintiff contends that defendant Jones violated his Fourteenth Amendment due process rights by: (1) failing to provide notice to plaintiff that he would face disciplinary measures if he failed to obey the order to place his hands in his mouth; (2) failing to “completely analyze the order for its lawfulness”; and (3) sentencing plaintiff to 30 days of disciplinary confinement in retaliation for filing the present action. (Pl.’s Br. in Support, Doc. No. 27, pp. 4, 5). First, the Magistrate Judge found that plaintiff had disobeyed the order to place his hands in his mouth. Second, the Magistrate Judge found that plaintiff does not have a liberty interest protected by the Due Process Clause in not being placed in disciplinary confinement. The Magistrate Judge therefore recommended that these claims against defendant Jones be dismissed. I agree. See Sandin, 515 U.S. 472. As to the plaintiff’s claim that defendant Jones imposed an additional 30 day sentence of disciplinary confinement in retaliation for plaintiff’s filing

of the present action, the Magistrate Judge found that plaintiff's conclusory allegation should be dismissed. I agree. See Flaherty, 713 F.2d at 13. Accordingly, plaintiff's claims against defendant Jones will be dismissed.

### III. Claims Against Defendants Smith, Burnett, Feeley, Larkins and Bitner

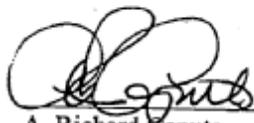
The Magistrate Judge found that the claims against defendants Smith, Burnett, Feeley, Larkins and Bitner should be dismissed. Plaintiff objects to the Magistrate Judge's Report on the grounds that the confiscation of his medical property without a pre-deprivation hearing violated his Eighth and Fourteenth Amendment rights.

The Magistrate Judge found that plaintiff failed to allege any facts to support his contention that the confiscation of skin ointments, eye drops and ankle braces rose to the level of deliberate indifference to a serious medical need for purposes of the Eighth Amendment. The Magistrate Judge therefore found that plaintiff failed to allege a claim against defendants for a violation of the Eighth Amendment. I agree with the Magistrate Judge's findings. See Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1081 (3d Cir. 1976) (Not every injury or illness complained of by an inmate invokes the protections of the Eighth Amendment, only those that are serious in nature.); Colburn v. Upper Darby Township, 946 F.2d 1017, 1023 (3d Cir. 1991) ("The concept of a serious medical need, as developed in Estelle v. Gamble, 429 U.S. 97 (1976), has two components, one relating to the consequences of a failure to treat and one relating to the obviousness of those consequences."). Accordingly, plaintiff's Eighth Amendment claims against defendants Smith, Burnett, Feeley, Larkins and Bitner will be dismissed.

The Magistrate Judge further found that plaintiff's conclusory allegations of retaliation were insufficient to state a claim under the Fourteenth Amendment. As previously discussed, a complaint which alleges retaliation in wholly conclusory terms may be dismissed on the pleadings alone. Flaherty, 713 F.2d at 13. The Magistrate Judge found that plaintiff failed to allege any facts showing that defendants seized and destroyed his medications in retaliation for the filing of the present action. After reviewing the amended complaint, I agree with the Magistrate Judge's findings. Accordingly, plaintiff's Fourteenth Amendment claim against defendants Smith, Burnett, Feeley, Larkins and Bitner will be dismissed.

An appropriate order will follow.

Date: April 20, 1999



A. Richard Caputo  
United States District Judge