

34
9/26/00
JM

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

JUSTIN M. CORLISS, :
 :
 Plaintiff : No. 3:CV-99-2121
 :
 vs. :
 :
 : (Judge Caputo)
 :
 JOSEPH CHESNEY, et al., :
 Defendants :

ORDER

Plaintiff Justin M. Corliss, an inmate at the State Correctional Institution, Frackville, ("SCI-Frackville"), Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983. By Order dated March 3, 2000, the plaintiff was permitted to file an amended complaint. (Doc. No. 16). On April 5, 2000, the plaintiff filed his amended complaint. (Doc. No. 18). Named as defendants are Joseph Chesney, Superintendent at SCI-Frackville; James Forr, Assistant to the Superintendent; Robert D. Shannon, Deputy Superintendent for Facilities Management; Bruce Smith, Deputy Superintendent for Centralized Services; John Kerestes, Major of the Guard; David Searfoss, Inmate Program Manager; Robert Bitner, Chief Hearing Examiner; Kevin Kane, Hearing Examiner; Leonard Smitrovitch, counselor; and Correction Officers James Popson, David Kneal, Dean Harner, John Cooney, Ronald Klock, Richard McPeak, and John Burke.

FILED
SCRANTON

SEP 26 2000

PER JM
DEPUTY CLERK

The plaintiff's amended complaint, which consists of forty (40) pages, one hundred fifty-eight (158) paragraphs of allegations and fifteen (15) causes of action raises claims of alleged repetitive cell searches and pat searches by prison guards at SCI-Frackville, (Doc. No. 1, Complaint at ¶21-25, 27, 33, 40, 41, 47, 87, 89, 90, 91, 93, 108, 110, 118, 127, 129); alleged threats and "atypical harassment" of plaintiff Id. at ¶¶ 28-30, 34, 35, 44, 46, 48, 52, 53, 83, 109, 114, 115, 119, 120, 126, 143, 146-150; alleged failure to allow plaintiff work release, Id. at ¶¶ 26, 37, 38, 42, 43, 50; alleged denial of idle pay, Id. at ¶¶ 39, 45, 50, 99, alleged improper boosting of his custody level, Id. at ¶¶ 50, 104, 105, 111, 112, 113; alleged improper placement of plaintiff in the restricted housing unit (RHU) at SCI-Frackville, Id. at 44, 45, 53, 54, 55, 63-67, 70-72, 131-134, 141, 142, 144, 151); allegedly being denied mail, Id. at ¶¶ 88, 92, 94, 98, 124); and alleged denial of legal property and rule book, Id. at ¶¶ 57, 58, 61, 69, 74, 76, 77, 79, 80, 152. For relief, plaintiff seeks compensatory and punitive damages as well as injunctive relief. Id.

Pending before the court is defendants' motion to dismiss. (Doc. No. 28). The motion is fully briefed and is ripe for disposition.

DISCUSSION

Defendants contend in their brief that while Corliss has filed four grievances while at SCI-Frackville, two involving mail, one involving property and one involving idle pay, he has only exhausted his administrative remedies with respect to one of these claims. (See Doc. No. 30, Attached Appendix containing copies of plaintiff's grievances and appeals). On October 21, 1999, Corliss filed a grievance, FRA-0304-99, which complained of Corliss' property not being properly transferred from SCI-Coal Township to SCI-Frackville. Id. This grievance was pursued to exhaustion. However, the subject of this grievance, is not a claim raised in the instant action.

Corliss does not refute this. In fact, in his brief in opposition to the defendants' motion, Corliss acknowledges that he is fully aware of the inmate grievance system and its procedures. (Doc. No. 32). Plaintiff argues, however, that he is prevented from exhausting his administrative remedies as a result of defendants' "retaliation and retribution for plaintiff seeking redress of grievances for wrongs committed by defendants." Id. The Court finds plaintiff's argument unpersuasive in light of the fact that when plaintiff followed the proper channels, he was able to grieve an issue to exhaustion.

Moreover, with respect to plaintiff's argument that "it would be wholly insane to file a 'grievance' for every single instance", Id., the United States Court of Appeals for the Third Circuit has held

A court, in rendering a decision on a motion to dismiss, must accept the veracity of the plaintiff's allegations. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); White v. Napoleon, 897 F.2d 103, 106 (3d Cir. 1990). In Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996), our Court of Appeals for the Third Circuit added that when considering a motion to dismiss based on a failure to state a claim argument, a court should "not inquire whether the plaintiffs will ultimately prevail, only whether they are entitled to offer evidence to support their claims." "[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, 45-46 (1957).

"The test in reviewing a motion to dismiss for failure to state a claim is whether, under any reasonable reading of the pleadings, plaintiff may be entitled to relief." Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993) (citation omitted). Additionally, a court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Independent Enters., Inc. v. Pittsburgh Water & Sewer Auth., 103 F.3d 1165, 1168 (3d Cir. 1997). Finally, it is additionally well-settled that pro se complaints should be liberally construed. Haines v. Kerner, 404 U.S. 519, 520 (1972). This court will now discuss

Defendants' motion in light of the standards set forth above and Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Defendants argue that they are entitled to an entry of dismissal on the basis that the plaintiff has failed to exhaust his administrative remedies. Defendants' argument is well-taken.

With respect to the applicability of administrative remedies, 42 U.S.C. § 1997e(a) reads as follows:

No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

This provision makes no distinction between an action for damages, injunctive relief, or both. In Nyhuis v. Reno, 204 F.3d 65, (3d Cir. 2000), the United States Court of Appeals for the Third Circuit very recently held that the exhaustion requirement is mandatory whether or not the administrative remedies afford the inmate-plaintiff the relief sought in the federal court action. In Nyhuis, the inmate had complained that federal prison officials had wrongfully confiscated some of his personal property. As in this case, the inmate sought compensatory damages, and the inmate had not pursued the available administrative remedies. Chief Judge Becker, writing for the unanimous panel, declared that administrative remedies must be

exhausted even though the prisoner could not obtain in the administrative process the monetary relief he sought in federal court.

Accordingly, Corliss' present claims are required to be exhausted.

The Pennsylvania Department of Corrections has a Consolidated Inmate Grievance Review System. DC-ADM 804 (effective October 20, 1994). With certain exceptions not applicable here, DC-ADM 804, Section VI ("Procedures") provides that, after attempted informal resolution of the problem, a written grievance may be submitted to the Grievance Coordinator; an appeal from the Coordinator's decision may be made in writing to the Facility Manager or Community Corrections Regional Director; and a final written appeal may be presented to the Chief Hearing Examiner.

Effective May 1, 1998, the Department of Corrections amended DC-ADM 804 to provide that a prisoner, in seeking review through the grievance system, may include requests for "compensation or other legal relief normally available from a court." (DC-ADM 804-4, issued April 29, 1998.) Further, the amendment requires that the [g]rievances must be submitted for initial review to the Facility/Regional grievance Coordinator within fifteen (15) days after the events upon which the claims are based," but allows for extensions of time for good cause, which "will normally be granted if the events complained of would state a claim of a violation of a federal right."

Id.

Defendants contend in their brief that while Corliss has filed four grievances while at SCI-Frackville, two involving mail, one involving property and one involving idle pay, he has only exhausted his administrative remedies with respect to one of these claims. (See Doc. No. 30, Attached Appendix containing copies of plaintiff's grievances and appeals). On October 21, 1999, Corliss filed a grievance, FRA-0304-99, which complained of Corliss' property not being properly transferred from SCI-Coal Township to SCI-Frackville. Id. This grievance was pursued to exhaustion. However, the subject of this grievance, is not a claim raised in the instant action.

Corliss does not refute this. In fact, in his brief in opposition to the defendants' motion, Corliss acknowledges that he is fully aware of the inmate grievance system and its procedures. (Doc. No. 32). Plaintiff argues, however, that he is prevented from exhausting his administrative remedies as a result of defendants' "retaliation and retribution for plaintiff seeking redress of grievances for wrongs committed by defendants." Id. The Court finds plaintiff's argument unpersuasive in light of the fact that when plaintiff followed the proper channels, he was able to grieve an issue to exhaustion.

Moreover, with respect to plaintiff's argument that "it would be wholly insane to file a 'grievance' for every single instance", Id., the United States Court of Appeals for the Third Circuit has held

that "Congress intended the [PLRA] to encompass not only ongoing, systemic prison conditions suits but also actions alleging specific acts of unconstitutional conduct by prison officials." Evans v. Stidd, 166 F.3d 1205 (3d Cir. 1998) (citing cf. McCarthy v. Bronson, 500 U.S. 136 (1991) (term "conditions of confinement" contained within 28 U.S.C. § 636 (b)(1)(B) encompassed isolated incidents of alleged unconstitutional conduct). Thus, it is clear that plaintiff has neither pursued his available administrative remedies, nor provided an acceptable basis upon which to excuse compliance with the exhaustion requirement and his complaint must be dismissed.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The defendants' motion to dismiss (Doc. No. 28) is granted.
2. Plaintiff's motions "for extraordinary relief", (Doc. No. 8); "Petition for an Order to Show Cause and Temporary Restraining Order", (Doc. No. 19); and "Motion for Entry of Default", (Doc. No. 31) are dismissed as moot.
3. The Clerk of Court shall close this case.
4. Any appeal from this Order will be deemed frivolous, without probable cause and not taken in good faith.

Dated: September 26, 2000 A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge

ARC:dlb