

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

**FILED**

JEFFERY DORSEY

v.

THE MEDICAL DEPARTMENT AT  
FRACKVILLE PRISON, et al.

DEC 21 1999 CIVIL ACTION  
MICHAEL E. KUNZ, Clerk  
By [Signature] Dep. Clerk  
NO. 99-0445

O R D E R

AND NOW, this 21st day of December, 1999, in accordance with the accompanying memorandum, it is hereby ORDERED that:

1. Leave to proceed in forma pauperis is GRANTED; and
2. This complaint is DISMISSED as legally frivolous pursuant to 28 U.S.C. § 1915(e).

BY THE COURT:

[Signature]  
HARVEY BARTLE, III, J.

COPIES -

TO: [Signature]

12/21/99

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

JEFFERY DORSEY

FILED CIVIL ACTION

v.

THE MEDICAL DEPARTMENT AT  
FRACKVILLE PRISON, et al.

DEC 21 1999  
MICHAEL E. KUNZ, No. 99-0445  
By jm - Rec. Clerk

MEMORANDUM

BARTLE, J.

DECEMBER 21, 1999

Plaintiff, an inmate at the State Correctional Institution at Frackville (S.C.I. Frackville), has filed a pro se 42 U.S.C. § 1983 civil rights action against the Medical Department at S.C.I. Frackville, Physicians Assistant Michael E. Sims, Doctor O'Conner, Physicians Assistant Neil Hefferman, Physicians Assistant Ms. Rita, and Health Care Administrator Linda Nauroth. Plaintiff also appears to be suing Superintendent Joseph Chesney and Deputy Superintendent Robert Shannon, although they are not listed as defendants in the caption of the complaint.

Plaintiff alleges that since his transfer from S.C.I. Graterford to S.C.I. Frackville on July 5, 1996, he has not received proper medical treatment for a foot condition. Plaintiff asserts that at S.C.I. Graterford he was regularly treated by a podiatrist, with satisfactory results. At S.C.I. Frackville, plaintiff was initially treated by a podiatrist who "did a good job," however, since that time he has been treated by the prison medical staff. Plaintiff alleges that his feet constantly hurt and he has been charged with institutional

misconduct because his foot pain has rendered him incapable of following orders given to him by the prison staff. He seeks injunctive relief.

With his complaint, plaintiff filed a request for leave to proceed in forma pauperis. As it appears he is unable to pay the cost of commencing this action, leave to proceed in forma pauperis will be granted pursuant to 28 U.S.C. § 1915. However, for the reasons which follow, the complaint will be dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e).

#### I. DISCUSSION

##### A. Plaintiff's Claim of Improper Medical Treatment

In evaluating prisoner medical claims, the Supreme Court has held that only "deliberate indifference to a [prisoner's] serious medical needs" constitutes a violation of the Eighth Amendment's prohibition against cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). Prisoner complaints which are directed at the wisdom or quality of medical care the prisoner has received do not state an Eighth Amendment violation. Id. at 106. Even if treatment is so negligent as to amount to malpractice, "medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Id.

In the instant case, a determination was made by prison medical officials that plaintiff's treatment could be provided by the prison medical staff after he was initially examined by a private podiatrist. Plaintiff's assertion that this form of

treatment is less effective suggests, at most, a lack of skill on the part of the prison medical staff, not deliberate indifference to plaintiff's medical needs. Prisoners may not demand a particular type of treatment as long as some treatment is provided. Campbell v. Sacred Heart Hospital, 496 F. Supp. 692 (E.D. Pa. 1980). Thus, while regrettable, plaintiff's claim that he is not receiving proper medical care for his foot condition fails to rise to the level of a federal constitutional violation.

#### B. Institutional Misconduct

In a civil rights action brought pursuant to 28 U.S.C. § 1983, the plaintiff must allege that a person acting under color of law deprived him of a right secured by the constitution or federal law. Kost v. Kozakiewicz, 1 F.3d 176, 185 (3d Cir. 1993) (listing elements of a § 1983 claim). Plaintiff's assertion that he was wrongly charged with institutional misconduct because his foot condition made him incapable of following orders fails to state a violation of his constitutional rights. An inmate has no constitutional guaranteed immunity from being wrongly accused of institutional misconduct. Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986), cert. denied, 485 U.S. 982 (1988); Flanagan v. Shively, 783 F. Supp. 922, 931-32 (M.D. Pa.), aff'd, 980 F.2d 722 (3d Cir. 1992), cert. denied, 510 U.S. 829 (1993).

#### II. CONCLUSION

Plaintiff has advanced an "indisputably meritless legal theory," and nothing in this complaint suggests that he could

amend the complaint to state a cause of action. Therefore, dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915(e) is appropriate. See Neitzke v. Williams, 490 U.S. 319, 327 (1989).

An order dismissing this complaint as legally frivolous follows.