

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

RONALD HAMILTON,

Plaintiff,

v.

SEC. JEFFERY BEARD,
CORRECTIONAL OFFICER MORRISON,
AND CORRECTIONAL OFFICER JOSH
ORPEN, OF THE STATE
CORRECTIONAL INSTITUTION AT
PITTSBURGH,

Defendants.

No. G.D. 01-22254

MEMORANDUM OPINION

JAMES, J.

March 27, 2002

Subsequent to Plaintiff's presentation of a "Motion/Affidavit to Proceed In Forma Pauperis", this court denied the Motion and dismissed the underlying Complaint as frivolous consistent with Pa. R.C.P. No. 240(j) and 42 Pa. C.S.A. § 6602(e)(2) by Order of Court dated January 8, 2002. Plaintiff has appealed this Order.

Plaintiff is an inmate at the State Correctional Institution of Pittsburgh and is housed on the Long Term Segregation Unit (LTSU), described as a "highly restrictive unit" by Plaintiff in Paragraph 2 of his Complaint. On August 1, 2001, while Plaintiff was taking a shower at a location separate from his cell, correctional officers attending to another inmate causing a disturbance accidentally set off fire sprinklers. As Plaintiff was confined to the shower facilities and unable to attend to his personal property, he requested of the correctional officers that they move a box of his personal items located

on the floor of his cell out of harm's way. Plaintiff contends that he is required to store items on the floor because the shelves and cabinets were removed from LTSU cells. The correctional officers did not comply with his request. Plaintiff claims that these personal items were destroyed by water damage.

Plaintiff instituted this action against the correctional officers alleging that they were negligent and deliberately indifferent for failing to comply with his request. In addition to seeking \$500.00 to replace the destroyed property, Plaintiff seeks a "declaration" that correctional officers could have either complied with his request or released him from the shower area to attend to his personal articles. Plaintiff also requests a "declaration that Defendant Beard had and has no penological (sic) justification to alter the L.T.S.U. cells in the fashion that he did, and therefore, forcing the storing of property on the cell floor". (Plaintiff's Complaint at Paragraph 27)

The Motion was denied and the Complaint dismissed consistent with Pennsylvania Rule of Civil Procedure 240(j) and 42 Pa.C.S.A. § 6602(e)(2). Pennsylvania Rule of Civil Procedure 240(j) states:

If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

42 Pa. C.S.A. § 6602(e)(2), in part, provides:

(e)... the court shall dismiss prison conditions litigation at any time, including prior to service on the defendant, if the court determines any of the following: ... (2) The prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief could be granted or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude relief.

A frivolous lawsuit is defined as lacking any basis in law or fact. Robinson V. Pennsylvania Board of Probation and Parole, 582 A.2d 857, 860 (Pa. 1990). See also Neitzke v. Williams, 490 U.S. 319, 109 S. Ct. 1827 (1989).

Plaintiff's Complaint fails to state a claim upon which relief can be granted. While on its face it appears that the Plaintiff has pled a negligence cause of action, the claim cannot succeed due to the lack of merit and basis in law. Plaintiff has not alleged a constitutional violation. In addition, Plaintiff has not asserted that the corrections officers acted outside their scope of employment or that an exception to sovereign immunity applies.

A court cannot interfere with the day-to-day administrative policies and procedures of a correctional institution. Prison officials must be accorded a wide range of deference in the execution of policies and procedures with regard to the day-to-day administration of prisoners under their care and the judiciary may only intervene when an alleged constitutional violation has occurred. Thomas v. Holtz, 707 A.2d 569, 570-01 (Pa. Cmwlth. 1998). In this case, Plaintiff has not averred a constitutional violation

In addition, Plaintiff has not alleged that the correctional officers acted outside the scope of their employment or that an exception to sovereign immunity applies as set forth at 42 Pa.C.S.A. § 8522. Therefore, the correctional officers are entitled to assert a valid affirmative defense and are immune from suit. See Bronson v. Lechward, 624 A.2d 799, 801 (Pa. Cmwlth. 1993), citing LaFrankie v. Miklich, 618 A.2d 1145 (Pa. Cmwlth. 1992).

Accordingly, Plaintiff has not asserted a factual or legal basis to support his claim.

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MEMORANDUM OPINION

Honorable Joseph M. James

Copies Sent To:

Ronald Hamilton, Pro Se

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