

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

LAMONT HENDERSON, :  
 :  
 Plaintiff :  
 :  
 vs. : CIVIL ACTION NO. 1:CV-03-0150  
 :  
 : (Judge Caldwell)  
 TONY SERACINO, Guard; :  
 TONY KALINDA, Guard; :  
 DONALD JONES, Hearing Examiner; :  
 THOMAS LAVAN, Superintendent; :  
 ALL EMPLOYEES OF DALLAS PRISON, :  
 Defendants :

M E M O R A N D U M

I. *Introduction*

Plaintiff, an inmate housed at the State Correctional Institution at Dallas (SCI-Dallas), filed a *pro se* complaint pursuant of 42 U.S.C. § 1983 alleging his civil rights were violated. Plaintiff claims that he was subjected to racial discrimination, harassment, retaliation, cruel and unusual punishment, denial of due process and denial of medical care by Defendants. Defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (doc. 17). We will dismiss the complaint because Plaintiff's claims are time barred and he fails to state a claim against any of the defendants named in this case.

II. *Background*

Henderson alleges that beginning in 1998, defendants Seracino and Kalinda, guards at SCI-Dallas, engaged in racial discrimination, harassment, and retaliation against him before and after visits with his wife. The complaint states that the defendants targeted Plaintiff because he is African-American and his wife is Caucasian. Plaintiff alleges that he has complained to the staff, but nothing has been done about his complaints.<sup>1</sup>

Plaintiff claims that on August 24, 2000, the start of his visit with his wife and grand-daughter was delayed by four hours and the visit was terminated after twenty minutes. Plaintiff alleges that this was done in retaliation for his complaining about defendants' Seracino and Kalinda's treatment of him during previous visits from his wife. Following the visit, Plaintiff received a misconduct for threatening a prison employee. At his hearing, Plaintiff asked to view a videotape of his visit but this request was denied by defendant Donald Jones, the hearing examiner. For the misconduct, Plaintiff received ninety days of disciplinary time. He asserts that other inmates only received thirty days for similar offenses.

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<sup>1</sup> Defendants do not argue that Plaintiff has failed to exhaust the administrative remedies available to him. See *Ray v. Kertes*, 285 F.3d 287, 295 (3d Cir. 2002) (holding that failure to exhaust administrative remedies is an affirmative defense that must be pled and proven by the defendants).

Plaintiff alleges that in September 2002, he was again harassed following a visit from his wife. This visit was terminated after an hour and a half because a prison guard (not a defendant) accused Plaintiff of having inappropriate contact with his wife. Henderson was issued a misconduct and he alleges that defendant Jones again denied him the opportunity to view a videotape of the visiting area. Plaintiff was found guilty of the misconduct. As a result, he lost his job and was issued ninety days' disciplinary time. He also alleges that his wife's visits were suspended for ninety days. Plaintiff argues that another inmate charged with the same offense received a lesser punishment.

Additionally, Plaintiff alleges that he was denied medical treatment while serving his disciplinary time. He claims that in 2000, he was not given his contact-lens case and solution for thirteen days. In 2002, he went without those items for eight days.

Plaintiff claims that he discussed his medical problem concerning his eyes with Defendant Thomas Lavan. Without mentioning a date, Henderson states he complained to Lavan that defendants Seracino and Kalinda would not allow him to wear his glasses to the visiting room. Plaintiff alleges that Lavan wrote a memo stating the same. Henderson claims that no other

inmates were denied permission to wear their eyeglasses in the visiting room.

Finally, Plaintiff alleges that, while in disciplinary custody in November 2002 he was denied the use of soap for three days and had to choose between cereal or coffee because he was given an inadequate amount of sugar.

Plaintiff requests the following relief: that he be sent to an eye doctor; that he be free from harassment and retaliation; that his misconducts be expunged; that his wife's visitation suspension be expunged; a letter of apology from Defendants; and monetary damages in the amount of \$3,200,000.00.

### III. *Standard of Review*

In deciding the defendants' motion under Fed. R. Civ. P. 12(b)(6), we must accept as true all well-pleaded allegations in the complaint and construe any reasonable inferences drawn from the allegations in the plaintiffs' favor. *Brown v. Philip Morris, Inc.*, 250 F.3d 789, 796 (3d Cir. 2001). Dismissal is appropriate only if it appears that the plaintiffs could prove no set of facts that would entitle relief. *Id.* However, we need not accept bald assertions or legal conclusions. *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

IV. *Discussion*

Plaintiff alleges that his rights under the First, Eighth and Fourteenth Amendments were violated because of the discrimination, harassment, retaliation, denial of due process and denial of medical care by Defendants.

A. *Statute of Limitations*

Defendants argue that some of Plaintiff's claims are barred by the statute of limitations. Plaintiff filed his complaint on January 24, 2003, raising claims under 42 U.S.C. § 1983. Claims brought in Pennsylvania pursuant to 42 U.S.C. § 1983 are subject to a two-year limitations period. See *Fitzgerald v. Larson*, 769 F.2d 160, 162 (3d Cir. 1985); *Smith v. City of Pittsburgh*, 764 F.2d 188, 194 (3d Cir. 1985). The statute of limitations in a civil rights action begins to accrue when the plaintiff knows or should have known of the injury upon which his action is based. See *Sandutch v. Muroski*, 684 F.2d 252, 254 (3d Cir. 1982); *de Botton v. Marple Township*, 689 F.Supp. 477, 480 (E.D. Pa. 1988). Thus, the plaintiff must allege that an unlawful act which is actionable under section 1983 occurred in the two-year period prior to the filing of the complaint. See *Behm v. Luzerne County Children & Youth Policy Makers*, 172 F.Supp.2d 575, 580 (M.D. Pa. 2001).

Because Henderson filed this complaint on January 24, 2003, we will only consider events which occurred between January 24, 2001 and January 24, 2003. His allegations concerning his wife's visit in August 2000, are barred by the statute of limitations and will be dismissed. Also, Plaintiff's claim that Defendant Jones denied him access to a videotape for a hearing in September 2000, is time barred and will be dismissed. Finally, Plaintiff's allegations that sometime in the year 2000, he was denied eye care for eight days is also barred by the statute of limitations and will be dismissed.

B. *Denial of Medical Treatment*

Plaintiff has failed to state a claim of denial of medical treatment. In *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976), the Court recognized that deliberate indifference to the serious medical needs of prisoners is proscribed by the Eighth Amendment. However, not every claim of inadequate medical care violates the Eighth Amendment. "An accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction of unnecessary pain." *Id.*, at 105, 97 S.Ct. at 291. In addition, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. *Id.* Deliberate indifference requires

that a prison official know of and disregard an excessive risk of inmate health and safety. *Farmer v. Brennan*, 511 U.S. 825, 835, 114 S.Ct. 1970, 1977, 128 L.Ed.2d 811. The official must be aware of facts from which an inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. *Id.*

Here, Plaintiff alleges that for eight days in the year 2002, while in disciplinary custody, he was denied medical treatment because he was not given eye solutions. Henderson's complaint states that he was "having a lot of eye pain" which he alleges was "life threatening." (doc. 1). This cannot be characterized as a wanton infliction of unnecessary pain. See *Davidson v. Scully*, 155 F.Supp.2d 77, 88 (S.D.N.Y. 2001)(holding that a prisoner's inadequate supply of contact-lens solutions does not constitute cruel and unusual punishment). We will dismiss this claim.

Also, Plaintiff alleges that defendant Lavan denied him permission to wear his prescription eyeglasses in the visiting room. Henderson states that Lavan spoke to defendants Seracino and Kalinda and issued a memorandum stating Plaintiff could not wear glasses in the visiting room. Plaintiff does not state when this occurred. Defendants' argue that this does not show deliberate indifference to any serious medical need. We agree. Plaintiff has not specifically alleged that he suffered

any harm because he did not wear his glasses. Nor does he allege that Defendants' actions affected his visits. We will dismiss this claim.

C. *Cruel and Unusual Punishment*

Next, Plaintiff alleges that he was denied soap for three days while in disciplinary custody in November of 2002. He states that this constituted cruel and unusual punishment. We disagree. Prison conditions constitute cruel and unusual punishment if they cause unquestioned and serious deprivations of basic human needs which deny inmates the minimal civilized measure of life's necessities. *Tillman v. Lebanon County Corr. Facility*, 221 F.3d 410, 417-18 (3d Cir. 2000). The government assumes responsibility for satisfying basic human needs such as food, clothing, shelter, medical care, and reasonable safety when it takes a person into custody against his will. *Id.* In this situation, Plaintiff must show a sufficiently serious objective deprivation, and that a prison official acted with deliberate indifference. *Id.*

Plaintiff has not stated that he suffered an objective deprivation because he lacked soap for three days. The denial of adequate hygiene over an extended period of time, which results in a specific physical harm, may be an adequate deprivation for the purposes of the Eighth Amendment. *See Ivan*

*v. County of Lancaser, et al.*, 2003 WL 1592001, \*5 (E.D. Pa. March 26, 2003)(collecting cases). We conclude that three days without soap does not constitute a serious deprivation, particularly where Plaintiff suffered no adverse effects and does not allege deliberate indifference. See *McCoy v. Chesney*, 1996 WL 119990, \*5 (E.D. Pa. March 15, 1996)(holding that three months without personal hygiene items was an objectively serious deprivation).

D. *Due Process*

Finally, Plaintiff alleges that defendant Donald Jones, a hearing examiner, denied him due process in September 2002. Specifically, Henderson states that during a visit with his wife on September 26, 2002, he was accused of inappropriate contact with her and issued a misconduct. At the misconduct hearing that followed, Plaintiff alleges that his request to view the videotape of the visit was denied by defendant Jones. Plaintiff was found guilty and received ninety days in disciplinary custody and lost his job. Also, his wife's visits were suspended for ninety days. Defendants argue that the claim should be dismissed because Plaintiff has not alleged that the hearing procedures set forth in *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), were not followed. This argument is misplaced, but we will dismiss this claim

because the disciplinary sanction does not violate a liberty interest protected by due process. In order to prevail on a due process claim, a plaintiff must demonstrate the existence of a protected liberty interest. In *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), the Court held that an inmate's confinement in disciplinary custody will rarely be sufficient, without more, to establish the kind of "atypical" deprivation of prison life necessary to implicate a liberty interest. *Id.* at 486, 115 S.Ct. at 2301. See also *Smith v. Mensinger*, 293 F.3d 641, 652-53 (3d Cir. 2002)(claim that false misconduct report resulted in seven months' disciplinary confinement did not state a due process violation).<sup>2</sup>

Both *Sandin* and *Mensinger* involved inmates' allegations that their disciplinary hearings did not satisfy the requirements of due process because certain witness were not permitted to testify or were unavailable. Those claims were rejected because "an administrative sentence of disciplinary confinement, by itself, is not sufficient to create a liberty interest, and [Plaintiff] does not claim that another constitutional right (such as access to the courts) was

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<sup>2</sup> Also, Plaintiff's loss of his job following the disciplinary hearing is not a due process violation. See *Wright v. O'Hara*, 2002 WL 1870479, at \*5 (E. D. Pa.) (Pennsylvania inmate has no constitutional right to a prison job); *Seale v. Ridge*, 1998 WL 792165, at \*2 (E. D. Pa.)(same).

violated." *Mensing*, 293 F.3d at 653 (applying *Sandin*). Similarly, beyond stating that he was denied access to the videotape, Henderson does not sufficiently allege that he was placed in disciplinary custody in retaliation for his attempt to exercise other constitutional rights. See, e.g. *Allah v. Seiverling*, 229 F.3d 220, 224 (3d Cir. 2000)(holding claim alleging denial of meaningful access to the courts not foreclosed by *Sandin*). We will dismiss this claim because Plaintiff has not established a liberty interest.

We will issue an appropriate order.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge

Date: July 22, 2003

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 ALL EMPLOYEES OF DALLAS PRISON, :  
 Defendants :

O R D E R

AND NOW, on this 22nd day of July, 2003, upon  
consideration of Defendants' motion to dismiss, it is ordered  
that:

1. Defendants' motion (doc. 17) is granted and the complaint (doc. 1) is dismissed.
2. The Clerk of Court shall close this file.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge