

Background

Plaintiff was housed at the State Correctional Institution at Dallas (SCID) in June, 2002. During that month, he was placed in the R.H.U. (Restricted Housing Unit) accused of running an inmate organization without prior approval. He was released after eleven (11) days.

On October 31, 2002, Nancy Barry, the mail inspector at SCID, confiscated as contraband a publication (Grapevine) mailed to Mr. Jones. Plaintiff filed a grievance and was successful. On January 15, 2003, Superintendent Lavan returned the newsletter to Plaintiff.

On January 6, 2003, Mr. Jones was again placed in the R.H.U. at Dallas by Lt. Cywinski who was investigating whether Mr. Jones had instigated a disturbance at that institution. Plaintiff's personal property was packed and removed from his cell by Lt. McClosky. Two days later, Plaintiff was taken from the R.H.U. to a day room for the purpose of compiling an inventory of his personalty. Corrections Officers Koynik and Wilk were assigned to complete the inventory.

Plaintiff told the officers that some of his personal property was missing, and that some of the property shown him wasn't his. He requested that a notation be made on the inventory of the missing property.

Koynik refused to permit Plaintiff to make a detailed inventory of his missing property, but told him to contact Lt. McClosky concerning the missing items. Plaintiff signed the inventory indicating that what was there was his.

On January 20, 2003, Plaintiff wrote to McClosky and explained the entire matter. Lt. McClosky did not respond.

Plaintiff was again escorted to a day room at SCID on February 10, 2003, where Correction Officers Koynik and Wilk were waiting and told him that some of his missing property had been found. A few items were produced and Plaintiff was permitted to keep one pair of used sneakers, three boxer shorts and three pair of socks. Again, Plaintiff asked Koynik and Wilk for the opportunity to make a list of the items still missing. They refused; told Plaintiff to contact Lt. McClosky; and, stated that as far as they were concerned, his property had been officially inventoried.

Plaintiff then told Officer Wilk that he did not have his permitted limit of personal property because state property (winter coat, three brown shirts and pants) were taking up a large part of his allotted space. Plaintiff also pointed out that the boxes used to store his property were smaller than the boxes which DOC policy approves.

Officer Wilk responded by directing Mr. Jones to throw away a significant amount of personalty.

Plaintiff again wrote to Lt. McClosky on February 11, 2003, indicating that many items of his personal property were still missing including two (2) pair of new sneakers. When he received no response, he filed a grievance (#44494) on February 18, 2003, seeking compensation for the missing property in the amount of \$309.80.

Lt. McClosky responded to Plaintiff's grievance indicating that Mr. Jones was not truthful and was attempting ". . ." to circumvent the system by soliciting others to hold your property while in the RHU". (Exhibit C) Also, Lt. McClosky stated in his response that by signing the inventory, Plaintiff had indicated that he was in agreement as to the property inventoried.

Relief was denied, and Plaintiff appealed the decision to Superintendent Lavan who also denied relief on March 5, 2003. Mr. Jones appealed this judgment to the central office of the DOC on March 13, 2003. He is awaiting a determination.

Plaintiff was transferred to SCIH on April 15, 2003. After his arrival, Sgt. Maskulyak confiscated his typewriter (Swintec Model 1000) and his radio. The next day, Plaintiff sent a request slip to Deputy, now Superintendent, Grace seeking his assistance to retrieve the confiscated property. After a follow-up request slip on May 1, a Lt. Wakefield came to Plaintiff's cell seeking receipts and brochures for the property. Thereafter, Wakefield told Jones that Deputy Grace gave an order to the effect that under no circumstances would the typewriter be returned.

Plaintiff filed a grievance (#55600) on June 30, 2003. Lt. Kitchen responded by setting forth Deputy Grace's reasons for not permitting the items into SCIH: "Your radio had an external jack which could be used for external speakers and your typewriter has a memory card capability". The grievance was denied and Jones immediately appealed to

Superintendent Kenneth Kyler who denied relief on August 15, 2003. Again, Mr. Jones appealed to the Secretary's Office of Inmate Grievances and Appeals. Chief Grievance Officer Sharon M. Burks denied the appeal on November 6, 2003. This action followed in due season.

Based on these factual asseveration, Mr. Jones has stated seven claims for relief against the eleven Defendants. (Paragraphs 51, 52, 53, 54, 55, 57, 58 of the Complaint.) We note that Plaintiff has seasoned his pleading with assertions that the conduct of which he complains was retaliatory in nature for his exercise of his right to free speech and because he utilized successfully the grievance process. However, aside from Plaintiff's statements of that conclusion, very few facts, if any, have been set forth to support the premise. We will address the seven claims seratim.

Standard

"In reviewing preliminary objections in the nature of a demurrer, we must accept as true all well-pleaded facts, which are material and relevant, as well as any reasonable inferences deducible therefrom." Commonwealth v. Percudani,

825 A.2d 743, 745 (Pa.Cmwlth. 2003.) Our duty then is to determine on the basis of these facts whether Plaintiff has stated a cause of action recognized at law. In re Adoption of S.P.T., 783 A.2d 779, 782 (Pa.Cmwlth. 2001.)

Requirements of a Section 1983 Claim

A section 1983 action requires (1) that the conduct complained of must be committed by a person acting under color of state law and (2) it must have deprived the plaintiff of a right of privilege secured by the constitution or the law of the United States. Riley v. Jeffes, 777 F.2d 143 (3d cir. 1985.) Our federal courts have demanded a heightened specificity requirement for claims in order to protect government officials from frivolous claims. Colburn v. Upper Darby Township, 838 F.2d 663, 666 (3d cir. 1988.) "To conform to this requirement, plaintiff's complaint must allege the specific conduct complained of, where and when that conduct took place, the identity of the responsible parties, and the constitutional right being asserted." Flanagan v. Shively, 783 F.Supp. 922, 928 (M.D.Pa. 1992), citing Colburn, supra, at 838 F.2d at p. 666.

Plaintiff's Claims

In Paragraph 51 of his complaint, Plaintiff alleges that conduct of Defendants Sutliff and Barry violated his rights "under the First, Fifth and Fourteenth Amendments to the United States Constitution".

Lt. Sutliff is a "supervisory correctional officer" at SCID; Ms. Barry is the mail room supervisor at SCID.

The conduct complained of was Plaintiff's placement in the R.H.U. at SCID in June, 2002, for eleven days, and the confiscation in October of the publication identified as the Grapevine. The publication was returned to Mr. Jones as a result of a successful grievance.

The issue is whether these facts are sufficient to support a civil rights claim, and we think it is beyond peradventure that they are not. In this regard, Plaintiff's pronouncement that the conduct was malicious has been disregarded as conclusory puff common to pro se complaints. No constitutional right was violated by placing Mr. Jones in the R.H.U. during an investigation, and the error of Ms. Barry was corrected through the grievance process. See

Hewitt v. Helms, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983). See also Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984). Accordingly, the demurrer to the claim asserted in Paragraph 51 is sustained.

Superintendent Thomas Lavan is the Defendant named in the claim stated in Paragraph 52. Plaintiff points to the following conduct in support of his assertion: (1) the refusal of Supt. Lavan to condemn Lt. Sutliff's placement of Plaintiff in the R.H.U.; (2) the refusal of Supt. Lavan to overturn Ms. Barry's confiscation of the Grapevine; and finally (3) the refusal of Supt. Lavan to vacate Lt. McClosky's February 27, 2003, response to his grievance concerning his missing personal property and to order compensation.

Obviously, since our conclusion is that neither Lt. Sutliff nor Ms. Barry violated any constitutionally protected right of the Plaintiff, Mr. Lavan as their supervisor cannot be liable. With respect to the claim based on Lt. McClosky's conduct, there is no allegation of personal involvement and the claim as we understand it is premised on a theory of respondeat superior. In this

federal circuit, there is no liability for an agent's wrongful acts even if those acts are committed within the scope of employment. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d cir. 1976). Accordingly, Supt. Lavan could not be liable for the conduct of Lt. McClosky unless, of course, he participated. In this regard, there is no allegation that he did. Therefore, we will sustain the demurrer to the claim made in Paragraph 52.

Next, in Paragraph 53, Plaintiff alleges that the actions of Cywinski, Koynik, Wilk and McClosky constituted "retaliation and confiscation of property without due process of law . . .".

Defendants are corrections officers at SCID and were involved in removing Plaintiff from the population at SCID on January 6, 2003. The officers participated in the inventory of Mr. Jones' personal property as detailed on pages 2, 3, 4 of this memorandum.

The claim is an example of Plaintiff's theory that the events at SCID were in retaliation for his successful grievance about the Grapevine; however, we point out that he sets forth in Paragraph 16 that his victory through the

grievance process occurred January 15, 2003, whereas his placement in the R.H.U. at SCID occurred January 6, 2003.

In any event, the issue is whether or not Plaintiff has ~~stated a Section 1983 claim against any or all of these~~ correctional officers. Our judgment is that he has not. In this regard, the standard enunciated by the United States Supreme Court in Sandin v. O'Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), forecloses a due process argument based on the transfer of the Plaintiff from the general population to the R.H.U. Likewise, the decision of the same court in Hudson v. Palmer, 82 L.Ed.2d 393 (1984), bars any due process claim with respect to the confiscation and/or loss of personal property since the Department of Corrections provides an adequate remedy to redress this alleged wrong. As noted by United States District Judge Eduardo Robreno last year in the case Mceachin v. Beard, 319 F.Supp.2d 510 (2004), "[T]he DOC prison grievance system has been recognized by courts in this circuit as providing adequate post-deprivation remedies to inmates in satisfaction of the Due Process Clause". Id. at pp. 514, 515. Likewise the Commonwealth Court of Pennsylvania concluded eighteen years ago that "DOC's inmate grievance review system provides an adequate and meaningful legal

remedy . . .". Waters v. Commonwealth, Department of Corrections, 97 Pa.Cmwlth, 283, 289, 509 A.2d 430, 433 (1986).

The claims against the four SCID corrections officers will be dismissed.

Thomas James is the subject of the Plaintiff's next claim of constitutional deprivation. He is identified in the complaint as the Chief Secretary of the Office of Grievances & Appeals of the Pennsylvania Department of Corrections. The conduct attributed to him and for which he has been sued is his refusal ". . . to overturn Lavan's March 5, 2003, findings . . .". Paragraph 55. On March 4, 2003, Superintendent Lavan responded to Plaintiff's appeal from the denial of relief concerning his personal property with a rather short but nonetheless unequivocal denial.

We assume Plaintiff is alleging constitutional wrongdoing from both the delay by Mr. James in acting upon his appeal and the denial of relief which is the consequence of no action. However, neither provides a basis for relief. On this point, the United States Court of Appeals for the Fourth Circuit opined in Adams v. Rice, 40 F.3d 72, 75 (4th

cir. 1994), cert. denied, 514 U.S. 1022, 115 S.Ct. 1371, 131 L.Ed.2d 227 (1995), that ". . . the constitution creates no entitlement to grievance procedures or access to any such procedure voluntarily established by a state". Therefore, the failure by Mr. James to provide Mr. Jones a favorable response to his grievance concerning his personal property is not actionable.

Next in Paragraph 57, Plaintiff claims that Defendants Grace and Kyler violated his rights by refusing to overturn the July 8, 2003, determination by Lt. Kitchen at SCIH that Plaintiff's typewriter and radio were properly confiscated upon Plaintiff's transfer to SCIH.

James L. Grace was at the time of the events giving rise to this case the Deputy Superintendent at SCIH. Today, he is the Superintendent. Kenneth Kyler was Superintendent at SCIH in 2003, but he has since retired.

Alike his argument regarding the loss of his personal property at SCID, Mr. Jones has framed his allegation of constitutional deprivation in due process language. For the same reasons therefore that we rejected the arguments made with respect to Officers Cywinski, Koynik, Wilk and

McClosky, we reject the claims against Messrs. Grace and Kyler. Also we note that Plaintiff availed himself of the grievance process, and received a decision, albeit an unsuccessful one, at all levels. In short, Mr. Jones has received all the due process to which he is entitled.

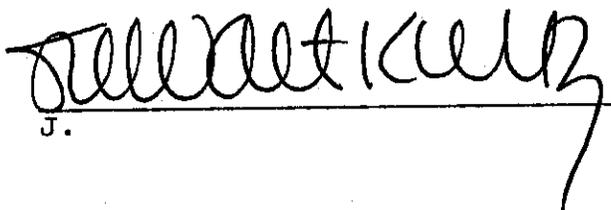
Finally, Plaintiff has asserted a claim against Ms. Sharon M. Burks who is the Chief Grievance Officer for the Department of Corrections. By letter dated November 6, 2003, Ms. Burks denied Plaintiff's appeal of his grievance concerning his typewriter and radio.

As we noted in disposing of the claim against Defendant James, Plaintiff cannot base a claim of constitutional deprivation upon an unfavorable result to an appeal from a decision with respect to a grievance. Therefore, this claim will be dismissed as well.

Conclusion

For the reasons stated, the demurrers of each of the named Defendants will be sustained and this action will be dismissed.³

BY THE COURT,


J.

DATED: January 20, 2005

³We have not addressed the claims made against the John Doe Defendants as we are unacquainted with any rule of court that permits such practice.

