

The complaint will now be reviewed pursuant to the screening provisions of the Act. For the reasons set forth below, the instant complaint will be dismissed without prejudice as legally frivolous under 28 U.S.C. § 1915(e)(2)(b)(i).

When considering a complaint accompanied by a motion to proceed in forma pauperis, a district court may determine that process should not be issued if the complaint is malicious, presents an indisputably meritless legal theory, or is predicated on clearly baseless factual contentions. *Neitzke vs. Williams*, 490 U.S. 319, 327-28 (1989); *Wilson vs. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989).² "The frivolousness determination is a discretionary one," and trial courts "are in the best position" to determine when an indigent litigant's complaint is appropriate for summary dismissal. *Denton vs. Hernandez*, 504 U.S. 25, 33 (1992).

Named as defendants are Jeffrey Beard, Secretary of the Pennsylvania Department of Corrections; John Andrae, SCI-Retreat

that may have been paid, the court shall dismiss the case at any time if the court determines that (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

² Indisputably meritless legal theories are those "in which it is either readily apparent that the plaintiff's complaint lacks an arguable basis in law or that the defendants are clearly entitled to immunity from suit." *Roman vs. Jeffes*, 904 F.2d 192, 194 (3d Cir. 1990) (quoting *Sultenfuss vs. Snow*, 894 F.2d 1277, 1278 (11th Cir. 1990)). Clearly baseless factual contentions describe scenarios "clearly removed from reality." *Id.*

Hearing Examiner; Robert Bitner, Chief Hearing Examiner; Edward Klem, SCI-Retreat Superintendent; Joseph Piazza and Charles Erickson, SCI-Retreat Deputy Superintendents; John Mack, Classification and Program Manager; and Correctional Officers Yocum, Miles and Maxwell. Jones' complaint focuses on the actions of defendant Andrae in relation to prison misconduct charges plaintiff received on October 7, 2001, for threatening an employee or their family with bodily harm and using abusive, obscene and inappropriate language toward an employee. (Doc. No. 1, complaint).

Plaintiff claims that on October 8, 2001, he returned his witness form, in which he requested three inmate witnesses to testify, to an officer in the Restricted Housing Unit, ("RHU"). (Id.). However, at plaintiff's October 9, 2001 misconduct hearing, defendant Andrae states to have never received plaintiff's witness form. Although plaintiff informed defendant Andrae that he had a copy on his desk in his cell, defendant Andrae "refused to call plaintiff's witnesses." (Id.). Defendant Andrae "then turned around and found plaintiff guilty of threatening an employee and dismissed the using abusive language and the only thing he relied upon in his finding of guilt was defendant Yocum's misconduct report." (Id.).

Plaintiff was sentenced to thirty (30) days disciplinary custody, loss of his job in the laundry and loss of his level 2 status. (Id.). Plaintiff appealed defendant Andrae's decision to the Program Review Committee, Superintendent Klem and a final appeal to Chief Hearing

Examiner Bitner. (Id.).

On August 26, 2003, plaintiff filed the instant action in which he claims that the "failure to call witnesses requested at a hearing violated his due process." (Id.). For relief, plaintiff seeks compensatory and punitive damages as well as the return of his job. (Id.).

While there is no indication that Jones initiated this lawsuit with malicious intentions, the complaint is suitable for summary dismissal under the in forma pauperis statute because it fails to articulate an arguable legal basis.

Discussion

In order to prevail on a civil rights claim a plaintiff must satisfy two criteria: 1) that the conduct complained of was committed by a person acting under color of state law, and 2) that said conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States. *West vs. Atkins*, 487 U.S. 42, 48 (1988); *Maine vs. Thiboutot*, 448 U.S. 1 (1980). Jones has failed to satisfy the second prong of this test because there are no allegations indicating that the misconduct hearing was conducted in violation of any of the procedures required under *Wolff vs. McDonnell*, 418 U.S. 539, 563-573 (1974).

The Fourteenth Amendment of the United States Constitution provides in pertinent part: "No State shall. . .deprive any person of life, liberty, or property, without due process of law. . . ." The

Supreme Court has mandated a two-part analysis of a procedural due process claim: first "whether the asserted individual interests are encompassed within the . . . protection of 'life, liberty or property[,]'" and second, "if protected interests are implicated, we then must decide what procedures constitute 'due process of law.'" *Ingraham vs. Wright*, 430 U.S. 651, 672 (1977). If there is no protected liberty or property interest, it is unnecessary to analyze what procedures were followed when an alleged deprivation of an interest occurred. In *Wolff vs. McDonnell*, 418 U.S. 539, 563-73 (1974), where the plaintiffs were deprived of good time credits as a severe sanction for serious misconduct, the Supreme Court held that such inmates had various procedural due process protections in a prison disciplinary proceeding, including the right to call witnesses and to appear before an impartial decision-maker.³

3. In *Wolff*, the Supreme Court recognized that "prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." *Id.* at 556. Nonetheless, the Supreme Court held that a prisoner facing serious institutional sanctions is entitled to some procedural protection before penalties can be imposed. *Id.* at 563-71. The Supreme Court set forth five requirements of due process in a prison disciplinary proceeding: (1) the right to appear before an impartial decision-making body; (2) twenty-four hour advance written notice of the charges; (3) an opportunity to call witnesses and present documentary evidence, provided the presentation of such does not threaten institutional safety or correctional goals; (4) assistance from an inmate representative, if the charged inmate is illiterate or if complex issues are involved; (5) a written decision by the fact finders as to the evidence relied upon and the rationale behind their disciplinary action. *Id.*

An additional procedural requirement was set forth in

Thereafter, the Court in *Hewitt vs. Helms*, 459 U.S. 460, 471 (1983), stated that a state law which "used language of an unmistakably mandatory character" creates a protected liberty interest. Following *Hewitt* many courts held that a state regulation can create a due process interest -- such as freedom from punitive segregation -- if the rule contains mandatory language such as "shall" or "will." E.g., *Layton vs. Beyer*, 953 F.2d 839, 848-49 (3d Cir. 1992).

The Court's decision in *Sandin vs. Conner*, 515 U.S. 472 (1995), however, marked a shift in the focus of liberty interest analysis from one "based on the language of a particular regulation" to "the nature of the deprivation" experienced by the prisoner. Id. at 481. In *Sandin* the Court was presented with the procedural due process claims of a state prisoner who had been found guilty of misconduct and sentenced to 30 days in disciplinary segregation. Id. at 474-76. The Court first found that the approach adopted in *Hewitt* - described above -- was unwise and flawed. Id. at 481-84. The Court also rejected plaintiff Conner's argument that "any state action taken for punitive reasons encroaches upon a liberty interest under the Due Process Clause even in the absence of any state regulation." Id. at 484. The Court reasoned, inter alia, that "[d]iscipline by prison

Superintendent, Massachusetts Correctional Inst. at Walpole vs. Hill, 472 U.S. 445, 453-56 (1985). In that case, the Court held that there must be some evidence which supports the conclusion of the disciplinary tribunal.

officials in response to a wide range of misconduct" is expected as part of an inmate's sentence. Id. at 485. The nature of plaintiff Conner's confinement in disciplinary segregation was found similar to that of inmates in administrative segregation and protective custody at his prison. Id. at 486.

Focusing on the nature of the punishment instead of on the words of any regulation, the Court held that the procedural protections in Wolff were inapplicable because the "discipline in segregated confinement did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest." Id. The Court examined the nature of Conner's disciplinary segregation and found that "[b]ased on a comparison between inmates inside and outside disciplinary segregation, the State's actions in placing him there for 30 days did not work a major disruption in his environment." Id. In the final holding of the opinion, the Court stated "that neither the Hawaii prison regulation in question, nor the Due Process Clause itself, afforded Conner a protected liberty interest that would entitle him to the procedural protections set forth in Wolff." Id. at 487 (emphasis added).⁴

4. The Sandin Court relied on three factors in making this determination: (1) confinement in disciplinary segregation mirrored conditions of administrative segregation and other forms of discretionary confinement; (2) based on a comparison between inmates inside and outside segregation, the state's action in placing the inmate there did not work a major disruption in the inmate's environment; and (3) the state's action did not inevitably affect the duration of inmate's sentence.

Even if the Wolff requirements were not complied with at the misconduct hearing, Jones' complaint, in light of Sandin, is without merit since he does not have a liberty interest in remaining free from disciplinary confinement and the procedural due process protections set forth in Wolff do not apply. Furthermore, the incidents of disciplinary confinement in the present case are not materially different than those the Supreme Court found to be "not atypical" in Sandin, and they do not differ appreciably from those of administrative custody.

This court and others within this circuit, applying Sandin in various actions, have found no merit in the procedural due process claims presented. See Marshall vs. Shiley, et al., Civil No. 94-1858, slip op. at 7 (M.D. Pa. July 26, 1996) (McClure, J.) (holding, pursuant to Sandin, that where plaintiff alleges only that he was sentenced to sixty days in disciplinary segregation, under Sandin, he cannot assert a claim for the violation of his Fourteenth Amendment rights); Muse vs. Geiger, et al., Civil No. 94-0388, slip op. at 4 (M.D. Pa. September 29, 1995) (Nealon, J.) (holding, pursuant to Sandin, that the procedural due process claims are meritless because

Furthermore, the majority in Sandin viewed administrative or protective custody as "not atypical" and within the "ordinary incidents of prison life." 515 U.S. at 484-86. Specifically, the Court stated that "Conner's confinement did not exceed similar, but totally discretionary confinement in either duration or degree of restriction." Id. at 486. Consequently, the appropriate point of comparison is between disciplinary segregation and other forms of discretionary segregation, not general population conditions.

the punishment twice imposed was thirty (30) days in disciplinary segregation (which differs little from administrative segregation)); Beckwith vs. Mull, Civil No. 94-1912, slip op. at 9-12 (M.D. Pa. September 27, 1995) (McClure, J.) (holding, pursuant to Sandin, that the procedural due process claims must fail because the punishment was twenty (20) days in disciplinary segregation); Sack vs. Canino, No. CIV. A. 95-1412, 1995 WL 498709, at *1 (E.D. Pa. August 21, 1995) (holding in the alternative, pursuant to Sandin, that the defendants deserved summary judgment on the procedural due process claims because plaintiff's punishment was thirty (30) days in disciplinary segregation); Brown vs. Stachelek, No. CIV. A. 95-522, 1995 WL 435316, at *3-4 (E.D. Pa. July 20, 1995) (holding, pursuant to Sandin, that plaintiff's procedural due process claims would be dismissed because plaintiff's punishment was thirty (30) days in disciplinary segregation); Colatriano vs. Williams, No. CIV. A. 94-292-SCR, 1995 WL 396616, at *2-3 (D. Del. June 23, 1995) (holding, pursuant to Sandin, that neither the Due Process Clause nor state law supported plaintiff's procedural due process claims because his punishment (at most ninety (90) days in "close custody" and a loss of "minimum status") was not outside the scope of his sentence and did not otherwise violate the Constitution). Considering the rules of law set forth in Sandin, the Court finds that the instant plaintiff's due process claims resulting from his placement in disciplinary segregation for a period of thirty (30) days are meritless because he

had no protected liberty interest in the first place.⁵ Moreover, the Third Circuit Court of Appeals has held that prolonged confinement in administrative custody was not cruel and unusual punishment in violation of the Eighth Amendment. *Griffin vs. Vaughn*, 112 F.3d 703, 709 (3d Cir. 1997). An inmate placed in administrative custody pursuant to a legitimate penological reason could "be required to remain there as long as that need continues." *Id.*

Similarly, plaintiff does not have a protected liberty interest in his housing status or in his custody level. *See Sandin*, 515 U.S. at 478 ("Due process clause does not protect every change in conditions of confinement"); *see also Hewitt*, 459 U.S. at 467 n.4 (transfer to another facility did not implicate liberty interest, event though transfer resulted in the loss of access to vocational, educational, recreational, and rehabilitative programs). In addition, an inmate's expectation of keeping a particular prison job does not amount to either a "property" or "liberty" interest entitled to protection under the Due Process Clause. *James vs. Quinlan*, 866 F.2d 627, 629-30 (3d Cir.), *cert. denied*, 493 U.S. 870 (1989); *Bryan vs.*

⁵Additionally, the Court notes that with respect to defendants Klem, Piazza, Erickson and Beard, it is abundantly clear from the allegations in the complaint that plaintiff is attempting to impose respondent superior liability on these defendants, which he cannot do. *See Rode vs. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). Rather, each named defendant must be shown, via the complaint's allegations, to have been personally involved in the events or occurrences which underlie a claim. *See Rizzo vs. Goode*, 423 U.S. 362 (1976); *Hampton vs. Holmesburg Prison Officials*, 546 F.2d 1077 (3d Cir. 1976).

Werner, 516 F.2d 233, 240 (3d Cir. 1975).

Under the circumstances, the court is confident that service of process is not only unwarranted, but would waste the judicial resources that § 1915 is designed to preserve. See Roman vs. Jeffes, 904 F.2d 192, 195 n.3 (3d Cir. 1990).

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. The complaint is dismissed without prejudice as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(b)(i)⁶.
2. The Clerk of Court is directed to close this case.
3. Any appeal from this order will be deemed frivolous, not taken in good faith and lacking probable cause.



MUIR
United States District Judge

⁶ The dismissal of this action does not relieve Jones of the obligation to pay the full filing fee. Until the filing fee is paid in full, the Administrative Order, issued August 27, 2003, is binding on the warden of SCI-Retreat, and the warden of any correctional facility to which Jones may be transferred.