

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

AARON JASON LENNON,	:	CIVIL NO. 3:11-CV-1308
Plaintiff,	:	
	:	(Judge Munley)
v.	:	
	:	
LAWLER, et al.,	:	
Defendants	:	

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MEMORANDUM

On July 12, 2011, Aaron Jason Lennon (“Lennon”), an inmate presently incarcerated at the State Correctional Institution at Huntingdon (“SCI-Huntingdon”), filed this civil rights action (Doc. 1), naming a number of individuals employed at SCI-Huntingdon. Lennon seeks to proceed in forma pauperis. (Doc. 3). Obligatory preliminary screening reveals that the complaint is subject to dismissal pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).

I. Allegations of the Complaint

Lennon alleges that he was nude in the presence of a female nurse and that there was video footage taken while he was in a “strip cage.” He unsuccessfully sought relief for this action *via* the administrative review process.

He filed the instant action seeking relief in the form of an investigation by the Grand Jury and indictment of all individuals. (Id. at 4.) He would also like 10 percent of his “victim fund” to be distributed to certain individuals and entities, including the President of the United States and the Salvation Army. (Id.)

II. Discussion

Section 1915(e)(2) states, in pertinent part, “the court shall dismiss the case at any time if the court determines that (B) the action . . . (ii) fails to state a claim on which relief may be granted. . . .” 28 U.S.C. §1915(e)(2)(B)(ii). The applicable standard of review for the failure to state a claim provision is the same as the standard for a 12(b)(6) motion, which provides for the dismissal of complaints that fail to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). When ruling on a motion to dismiss under Rule 12(b)(6), the court must “accept as true all [factual] allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff.” Kanter v. Barella, 489 F.3d 170, 177 (3d Cir. 2007) (quoting Evancho v. Fisher, 423 F.3d 347, 350 (3d Cir. 2005)). Although the court is generally limited in its review to the facts contained in the complaint, it “may also consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case.” Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n. 2 (3d Cir. 1994); see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997).

Federal notice and pleading rules require the complaint to provide “the defendant notice of what the . . . claim is and the grounds upon which it rests.” Phillips v. County of Allegheny, 515 F.3d 224, 232 (3d Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). The plaintiff must present facts that, if true, demonstrate a plausible right to relief. See FED. R. CIV. P. 8(a) (stating that the

complaint should include “a short and plain statement of the claim showing that the pleader is entitled to relief”); Ashcroft v. Iqbal, ---U.S. ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (explaining that Rule 8 requires more than “an unadorned, the-defendant unlawfully-harmed-me accusation”); Twombly, 550 U.S. at 555 (requiring plaintiffs to allege facts sufficient to “raise a right to relief above the speculative level”). Under this liberal pleading standard, courts should generally grant plaintiffs leave to amend their claims before dismissing a complaint that is merely deficient. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002); Shane v. Fauver, 213 F.3d 113, 116-17 (3d Cir. 2000). A complaint that does not establish entitlement to relief under any reasonable interpretation is properly dismissed without leave to amend. Grayson., 293 F.3d at 106.

Section 1983 of Title 42 of the United States Code offers private citizens a cause of action for violations of federal law by state officials. See 42 U.S.C. § 1983. The statute provides, in pertinent part, as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Id.; see also Gonzaga Univ. v. Doe, 536 U.S. 273, 284-85 (2002); Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996). To state a claim under § 1983, a plaintiff must allege “the violation of a right secured by the Constitution and laws of the United States, and must show

that the alleged deprivation was committed by a person acting under color of state law.”

West v. Atkins, 487 U.S. 42, 48 (1988).

Also, “[a] defendant in a civil rights action must have personal involvement in the alleged wrongs. . . . Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence.” Rode, 845 F.2d 1195, 1207-08 (3d Cir. 1988); see also, Rizzo v. Goode, 423 U.S. 362 (1976); Atkinson v. Taylor, 316 F.3d 257 (3d Cir. 2003). Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity. Rode, 845 F.2d at 1207-08. Individual liability can be imposed under Section 1983 only if the state actor played an “affirmative part” in the alleged misconduct. Rode, *supra*. Alleging a mere hypothesis that an individual defendant had personal knowledge or involvement in depriving the plaintiff of his rights is insufficient to establish personal involvement. Rode, 845 F.2d at 1208.

Plaintiff fails to allege conduct that rises to the level of a constitutional violation. The Eighth Amendment does not mandate that prisons be free of discomfort. Hudson, 503 U.S. at 9. Rather, a prisoner must show that he has been deprived of “the minimal civilized measure of life’s necessities,” such as food, clothing, shelter, sanitation, medical care, or personal safety. Farmer, 511 U.S. at 834 (citations omitted). To violate the Eighth Amendment, conditions of confinement must be dangerous, intolerable or shockingly substandard. Riley v. Jeffes, 777 F.2d 143, 147 (3d Cir. 1985); Inmates of Allegheny Cnty. Jail v. Pierce, 612 F.2d 754, 757 (3d Cir. 1979). Clearly, being nude in the presence of a female nurse does not

constitute a denial of food, clothing, shelter, sanitation, medical care, or personal safety.

Nor is such a condition dangerous, intolerable, or shockingly substandard.

He fares no better in attempting to assert a claim arising out of the denial of his requests for administrative review. Participation in the after-the-fact review of a grievance or appeal is not enough to establish personal involvement. See Rode, 845 F.2d at 1208 (mere filing of a grievance is not enough to impute the actual knowledge necessary for personal involvement); Brooks v. Beard, 167 F. App'x 923, 925 (3d Cir. 2006) (holding that a state prisoner's allegation that prison officials and administrators responded inappropriately, or failed to respond to a prison grievance, did not establish that the officials and administrators were involved in the underlying allegedly unconstitutional conduct); Croom v. Wagner, 2006 WL 2619794, at *4 (E.D. Pa. Sept. 11, 2006) (holding that neither the filing of a grievance nor an appeal of a grievance is sufficient to impose knowledge of any wrongdoing); Ramos v. Pennsylvania Dept. of Corrections, 2006 WL 2129148, at *2 (M.D. Pa. July 27, 2006) (holding that the review and denial of the grievances and subsequent administrative appeal does not establish personal involvement); Pressley v. Blaine, No. 01-2468, 2006 U.S. Dist. LEXIS 30151, at *17 (W.D. Pa. May 17, 2006) (“[M]ere concurrence in a prison administrative appeal process does not implicate a constitutional concern.” (citing Garfield v. Davis, 566 F. Supp. 1069, 1074 (E.D. Pa. 1983))). Therefore, this claim is also subject to dismissal.

Further, to the extent that Lennon requests that the Grand Jury conduct an

investigation, this is relief that simply cannot be granted. The decisions to investigate and prosecute are solely within the discretion of a prosecutor. United States v. Batchelder, 442 U.S. 114, 124 (1979); Community for Creative Non-Violence v. Pierce, 786 F.2d 1199, 1201 (D.C.Cir. 1986) (“The power to decide when to investigate, when to prosecute, lies at the core of the Executive’s duty to see to the faithful execution of the laws . . . when reviewing the exercise of that power, the judicial power is, therefore, at its most limited.”) See also Forsyth v. Kleindienst, 599 F.2d 1203, 1215 (3d Cir. 1979).

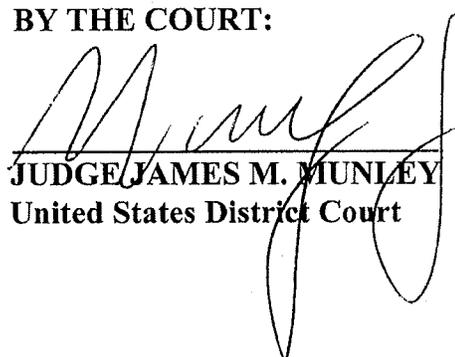
Because the allegations of the complaint fail to establish entitlement to relief under any reasonable interpretation, the complaint is properly dismissed without leave to amend. Grayson, 293 F.3d at 106.

III. Conclusion

Based on the foregoing, plaintiff’s complaint will be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).

An appropriate order will issue.

BY THE COURT:


JUDGE JAMES M. MUNLEY
United States District Court

Dated: August 10, 2011

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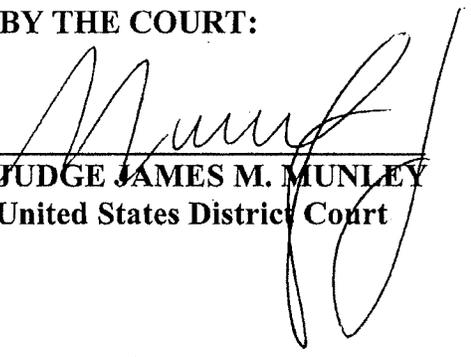
ORDER

AND NOW, to wit, this 10th day of August 2011, upon consideration of plaintiff's complaint (Doc. 1) and the application to proceed in forma pauperis (Doc. 3), it is hereby

ORDERED that:

1. The motion to proceed in forma pauperis (Doc. 3) is GRANTED for the sole purpose of the filing of the action.
2. Plaintiff's complaint is hereby DISMISSED pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).
3. Any appeal from this order is DEEMED frivolous and not in good faith. See 28 U.S.C. § 1915(a)(3).

BY THE COURT:



JUDGE JAMES M. MUNLEY
United States District Court