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

JOHN ROBERT McCOOL,

Plaintiff

v.

THOMAS JAMES, et al.,

Defendants

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No. 4:CV-01-0519

Complaint Filed 3/23/01

(Judge Muir)

(Magistrate Judge Blewitt)

ORDER

December 5, 2001

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On March 23, 2001, Plaintiff John Robert McCool, an inmate at the State Correctional Institution at Pittsburgh, Pennsylvania ("SCI-Pittsburgh"), filed this civil rights action pursuant to 42 U.S.C. § 1983. McCool is proceeding pro se. The Clerk of Court assigned this case to us but referred it to United States Magistrate Judge Thomas M. Blewitt for preliminary consideration.

McCool's complaint consists of various constitutional claims set forth in nine single-spaced, typed pages. The alleged constitutional violations include the deprivation of property without due process, cruel and unusual punishment, impairment of access to the courts, discrimination, and impairment of ability to exercise his religious freedoms. The Defendants named in the complaint are 14 officers employed by, and officials of, the Pennsylvania Department of Corrections.

**FILED**  
**WILLIAMSPORT**

DEC - 5 2001

PER KF  
DEPUTY CLERK

On May 29, 2001, the Defendants filed a motion to dismiss McCool's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). On November 13, 2001, Magistrate Judge Blewitt issued a report in which he recommended that the motion to dismiss be granted. The time allowed for McCool to file objections to that report and recommendation expired on November 30, 2001, he filed no objections, and the matter is ripe for disposition.

When no objections are filed to the report of a Magistrate Judge, we need only review that report as we in our discretion deem appropriate. *Thomas v. Arn*, 474 U.S. 145, 151-52 (1985).

In determining whether a plaintiff has stated a claim upon which relief may be granted, a court must accept the veracity of the plaintiff's allegations. *Scheuer vs. Rhodes*, 416 U.S. 232, 236 (1974); *Brouse vs. Itinger, et al.*, Civil No. 88-1627 (M.D. Pa. April 26, 1989). Furthermore, "the complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley vs. Gibson*, 355 U.S. 41, 45-6 (1957); *District Council 47 vs. Bradley*, 795 F.2d 310 (3d Cir. 1986). However, the court is "not required to accept legal conclusions either alleged or inferred from the pleaded facts". *Kost vs. Kozakiewicz*, 1 F.3d at 183 (quoting *Mescall vs. Burrus*, 603 F.2d 1266, 1269 (7th Cir. 1979)). It is also well-settled that pro se complaints should be liberally construed. *Haines vs. Kerner*, 404 U.S. at 520.

The Magistrate Judge recommends that all but one claim in McCool's complaint be dismissed because McCool has failed to exhaust his administrative remedies relating to those claims. McCool is required to exhaust his available administrative remedies because his complaint relates to prison conditions. Title 42 U.S.C. § 1997e(a), provides as follows:

No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

Prisoners are required to exhaust available administrative remedies prior to seeking relief pursuant to 42 U.S.C. § 1983 or any other federal law. See *Nyhuis vs. Reno*, 204 F.3d 65, 67 (3d Cir. 2000) ("... we hold that the [Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996)] amended § 1997e(a) in such a way as to make exhaustion of all administrative remedies mandatory - whether or not they provide the inmate-plaintiff with the relief he says he desires in his federal action."); *Rankins vs. Murphy*, Civ. A. No. 98-1669, 1998 WL 767441, at \* 1 (E.D. Pa. November 3, 1998).

Our review of the file reveals no error relating to the Magistrate Judge's determination regarding McCool's failure to exhaust his administrative remedies. In addition, McCool has not objected to it. We will adopt that recommendation as our own.

McCool's sole remaining claim is that certain Defendants violated McCool's constitutional right of access to the courts. Magistrate

Judge Blewitt recommends the dismissal of this claim on the ground that McCool has not alleged the requisite type of injury necessary to proceed with such a claim. See Belle vs. Crawford, 1994 WL 136986 \*4 (E.D. Pa.) (Vanartsdalen, J.) (citing Hudson vs. Robinson, 678 F.2d 462 (3d Cir. 1982)); Reid vs. Seville, 1996 WL 421901 \*5 (E.D. Pa.) (Giles, J.) (citing Vandelft vs. Moses, 31 F.3d 794 (9<sup>th</sup> Cir.), cert. denied, 116 S. Ct. 91 (1991)). Our review of the complaint confirms the Magistrate Judge's determination. McCool's access to courts claim should be dismissed because he has failed to allege any injury in connection with that claim.

The report of Magistrate Judge Blewitt is free from error. Because we find no error in Magistrate Judge Blewitt's report we shall adopt it as our own and grant the Defendants' motion to dismiss McCool's complaint.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The report and recommendation of Magistrate Judge Blewitt filed November 13, 2001, is adopted in toto.
2. The Defendants' motion to dismiss (Doc. 9) is granted.
3. The Clerk of Court shall close this case.
4. The Clerk shall send a copy of this order to Magistrate Judge Blewitt.
5. Any appeal from this order will be deemed frivolous, without

probable cause and not taken in good faith.



MUIR, U.S. District Judge

MM:ga