15
8-3-01

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

JOHN ROBERT MCCOOL,	:	
Plaintiff	:	No. 4:01-CV-1100
v.	:	Complaint Filed 6/20/01
WEXFORD MEDICAL SERVICES, ET AL.,	:	(Judge Muir)
Defendants	:	

FILED
WILLIAMSPORT, PA
AUG 03 2001
MARY E. D'ANDREA, CLERK
Per
Deputy Clerk

ORDER

August 3, 2001

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On June 20, 2001, Plaintiff John Robert McCool, an inmate at the State Correctional Institution at Huntingdon ("SCI-Huntingdon"), filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Along with the complaint McCool filed an application to proceed in forma pauperis, motion for a temporary restraining order or preliminary injunction, motion to dispense with the requirement of security and a motion for service of process by the United States Marshal. On July 3, 2001, McCool filed an amended complaint. The amended complaint involves challenges to the conditions of McCool's confinement. Specifically, McCool contends that he was provided inadequate post-operative medical care at the State Correctional Institution at Smithfield ("SCI-Smithfield"). It also appears that McCool is contending that his rights were violated at a misconduct hearing. Named as Defendants are Wexford Medical Services and health care

Certified from the record
Date: 8/3/01
Mary E. D'Andrea, Clerk
Per
Deputy Clerk

workers and several correctional officials at SCI-Huntingdon and SCI-Smithfield. The case was assigned to us but referred to Magistrate Judge Thomas M. Blewitt for preliminary consideration.

On July 19, 2001, Magistrate Judge Blewitt filed a report in which he recommended that McCool's complaint be dismissed for failure to exhaust administrative remedies and that the other motions be denied as moot. On July 30, 2001, McCool filed objections to the report of Magistrate Judge Blewitt.

When objections are filed to a report of a magistrate judge, we make a de novo determination of those portions of the report or specified proposed findings or recommendations made by the magistrate judge to which there are objections. United States vs. Raddatz, 447 U.S. 667 (1980); 28 U.S.C. §636(b)(1); Local Rule 72.31. District judges have wide discretion as to how they treat recommendations of the magistrate judge. Id. Indeed, in providing for a de novo review determination rather than a de novo hearing, Congress intended to permit whatever reliance a district judge, in the exercise of sound discretion, chooses to place on a magistrate judge's proposed findings and recommendations. Id. See also Mathews vs. Weber, 423 U.S. 261, 275 (1976); Goney vs. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

Prior to seeking relief pursuant to 42 U.S.C. § 1983 or any other federal law, prisoners are required to exhaust available administrative remedies. 42 U.S.C. § 1997e(a), provides as follows:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or

> any other Federal law, by a prisoner confined in a jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

The Pennsylvania Department of Corrections has a Consolidated Inmate Grievance Review System. DC-ADM 804 (effective October 20, 1994). With certain exceptions not applicable here, DC-ADM 804, Section VI (Procedures) provides that, after attempted informal resolution of the problem, a written grievance may be submitted to the Grievance Coordinator; an appeal from the Coordinator's decision may be made in writing to the Facility Manager or Community Corrections Regional Director; and a final written appeal may be presented to the Chief Hearing Examiner.

Effective May 1, 1998, the Department of Corrections amended DC-ADM 804 to provide that a prisoner, in seeking review through the grievance system, may include requests for "compensation or other legal relief normally available from a court." (DC-ADM 804-4, issued April 29, 1998) Further, the amendment requires that the "grievance must be submitted for initial review to the Facility/Regional grievance Coordinator within fifteen (15) days after the events upon which the claim are based," but allows for extensions of time for good cause, which "will normally be granted if the events complained of would state a claim of a violation of a federal right." Id.

Magistrate Judge Blewitt noted in his report that Hollawell in the original complaint stated that he did not exhaust his administrative remedies. However, the original

complaint only dealt with the medical care claims. McCool in his amended complaint does allege with respect to the misconduct hearing claims that he has exhausted available administrative remedies.

In his objections to Magistrate Judge Blewitt's report McCool does not state that he has exhausted his available administrative remedies with regard to the medical claims. However, he does indicate he exhausted his administrative remedies with regard to his claims relating to the misconduct hearing. It does appear that McCool has exhausted his administrative remedies with regard to those claims. Consequently, the complaint should not be dismissed in toto on the basis that McCool failed to exhaust administrative remedies. McCool's medical claims will be dismissed for failure to exhaust administrative remedies. However, we will not dismiss the claims relating to the misconduct hearing for failure to exhaust administrative remedies.

The claims relating to the misconduct hearing are vague. It appears that McCool is claiming he was denied due process at the hearing. In Wolff vs. McDonnell, 418 U.S. 539, 563-573 (1974), where the plaintiffs were deprived of good time credits as a severe sanction for serious misconduct, the Supreme Court held that such inmates have various procedural due process protections in a prison disciplinary proceeding, including the right to call witnesses and to appear before an impartial

decision-maker.[1] There are no allegations in the complaint from which we can conclude that McCool was not accorded the procedural protections enumerated in Wolff and its progeny. Consequently, McCool's due process claim will be dismissed.

Magistrate Judge Blewitt's report will be adopted in part. McCool's medical care claims will be dismissed for failure to exhaust administrative remedies. McCool's due process claim will be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted.[2]

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[1]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 Superintendent, Massachusetts Correctional Institution at Walpole vs. Hill, 472 U.S. 445, 453-456 (1985). In that case, the Court held that there must be some evidence which supports the conclusion of the disciplinary tribunal.

[2] 28 U.S.C. § 1915(e)(2), which was created by § 804(a)(5) of the Prison Litigation Reform Act of 1995, states:

> (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at anytime 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

NOW, THEREFORE, IT IS ORDERED THAT:

1. The report of Magistrate Judge Blewitt dated July 19, 2001, is adopted in part.

2. McCool's medical care claims are dismissed without prejudice for failure to exhaust administrative remedies.

3. McCool's due process claims are dismissed without prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted.

4. McCool's motion for a temporary restraining order or a preliminary injunction (Doc. 1), motion to dispense with security (Doc. 5) and motion for service of process (Doc. 4) are denied as moot.

5. The Clerk of Court shall close this case and send a copy of this order to Magistrate Judge Blewitt.

6. Any appeal from this order will be deemed frivolous, without probable cause and not taken in good faith.

MUIR, U.S. District Judge

MM:gs

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monetary relief against a defendant who is immune from such relief.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

August 3, 2001

Re: 4:01-cv-01100 McCool v. Wexford Medical Srvc

True and correct copies of the attached were mailed by the clerk to the following:

John Robert McCool
SCI-Huntingdon
DN4994
1100 Pike St.
Huntingdon, PA 16654

cc:

Judge	( )		( ) Pro Se Law Clerk
Magistrate Judge	(✓)		( ) INS
U.S. Marshal	( )		( ) Jury Clerk
Probation	( )		
U.S. Attorney	( )		
Atty. for Deft.	( )		
Defendant	( )		
Warden	( )		
Bureau of Prisons	( )		
Ct Reporter	( )		
Ctroom Deputy	( )		
Orig-Security	(✓)		
Federal Public Defender	( )		
Summons Issued	( )	with N/C attached to complt. and served by: U.S. Marshal ( ) Pltf's Attorney ( )	
Standard Order 93-5	( )		
Order to Show Cause	( )	with Petition attached & mailed certified mail to: US Atty Gen ( ) PA Atty Gen ( ) DA of County ( ) Respondents ( )	
Bankruptcy Court	( )		
Other_____	( )		

MARY E. D'ANDREA, Clerk

DATE: 8/3/01

BY: _____
Deputy Clerk