

1995 JUN 14 10 30 AM  
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

HOWARD ANTONIO WATSON,  
Plaintiff

v.

DR. SINGH,  
Defendant

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CIVIL NO. 3:CV-95-1160  
(Judge Conaboy)

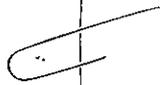
ORDER

Background

Howard Antonio Watson, an inmate presently confined at the State Correctional Institution, Coal Township, Pennsylvania, filed the above-captioned civil rights complaint pursuant to 42 U.S.C. § 1983 in the United States District Court for the Eastern District of Pennsylvania. By order dated June 14, 1995, the Eastern District granted plaintiff temporary in forma pauperis status and transferred his action to this court. For the reasons outlined below, Watson will likewise be allowed temporary leave to proceed in forma pauperis for the purpose of filing this action, but his complaint will be dismissed without prejudice as legally frivolous pursuant to 28 U.S.C. § 1915(d).

Plaintiff names as sole defendant Dr. Singh, whom is identified as a physician at Watson's former place of confinement,

Certified from the record  
Date 8/31/95  
Mary E. D'Andrea, Clerk  
Per *[Signature]*  
Deputy Clerk



the State Correctional Institution, Camp Hill, Pennsylvania (SCI-Camp Hill). His complaint asserts that on November 22, 1993 while confined at SCI-Camp Hill, plaintiff received "five (5) abscesses from a dentists' (sic) needle to numb by mouth in extracting one (1) molar tooth." Document 1, ¶ IV of the record.

On November 26, 1993, Watson alleges that the defendant "prescribed medication pills . . . to get rid of pain from all my teeth and the abscesses." Id. However, the medication, while relieving plaintiff's pain, caused sharp pains to his "spleen, livers, lungs, intestines, stomach/esophagus." Id. Thereafter, Dr. Singh on December 14, 1993, prescribed new medication to relieve plaintiff's abdominal pain. However, that medicine "became faulty slowly damaging my esophagus tube" and resulting in pain when swallowing, as well as a permanent case of achalasia.<sup>1</sup>

#### DISCUSSION

In Neitzke v. Williams, 490 U.S. 319 (1989), the United States Supreme Court held that a civil rights complaint may be dismissed as legally frivolous only if "it lacks an arguable basis in law or in fact." Id. at 325. A plaintiff, in order to state a viable § 1983 claim, must plead with specificity two essential elements: 1) that the conduct complained of was committed by a person acting under color of state law, and 2) that said conduct

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1. Achalasia is a failure to relax which causes the upper esophagus to become dilated and filled with retained food.

deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States. Rotolo v. Borough of Charleroi, 532 F.2d 920, 922 (3d Cir. 1976).

As required under Estelle v. Gamble, 429 U.S. 97 (1976), an inmate plaintiff must demonstrate that prison officials have breached the standard of medical treatment to which he was entitled. The government has an "obligation to provide medical care for those who it is punishing by incarceration. . ." Id. at 103. However, a constitutional violation does not arise unless there is "deliberate indifference to serious medical needs of the prisoner" which constitutes "unnecessary and wanton infliction of pain." Id. at 104. The Court of Appeals for the Third Circuit has held that not every injury or illness enjoys constitutional protection; only serious medical problems are actionable. See West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978). Additionally, it has been noted that prison authorities have considerable latitude in the diagnosis and treatment of prisoners. Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979).

Furthermore, a complaint that a physician or a medical department "has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment [as] medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Estelle at 106. Where a prisoner has actually been provided with medical treatment, one cannot always conclude that,

if such treatment was inadequate, it was no more than mere negligence. See Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993). It is true that if inadequate treatment results simply from an error in medical judgment, there is no constitutional violation. See id. However, where a failure to provide adequate treatment is deliberate and motivated by non-medical factors, a constitutional claim may be presented. See id.

A recent decision by the Supreme Court addressed the issue of what standard should be applied in determining deliberate indifference in Eighth Amendment cases. The Court established that the proper analysis is whether a prison official "acted or failed to act despite his knowledge of a substantial risk of harm." Farmer v. Brennan, \_\_\_\_ U.S. \_\_\_\_, 114 S.Ct. 1970, 1981 (1994). The Third Circuit in Durmer added that a non-physician defendant can not be considered deliberately indifferent for failing to respond to an inmate's medical complaints when he is already receiving treatment by the prison's medical staff. Id.

In the instant case, plaintiff is not alleging that Dr. Singh was deliberately indifferent to his medical needs, but rather, is maintaining only that the defendant provided negligent care. Watson's complaint clearly acknowledges that he is attempting to establish liability against Dr. Singh because of "medical/dental malpractice;" the defendant's prescription of "faulty medications;" his "inadequate inabilities" and

"negligence." Id. at ¶ v.<sup>2</sup>

As previously noted, under Estelle, allegations of medical malpractice can not be pursued under § 1983. Plaintiff by his own admission is contending only that he received negligent medical care from the defendant. Such allegations of negligence do not rise to the level of a constitutional violation under Estelle, consequently, there is no basis for liability under § 1983.

Since plaintiff's complaint is "based on an indisputably meritless legal theory," it will be dismissed as legally frivolous.<sup>3</sup> Wilson v. Rackmill, 878 F.2d 772, 774 (3d Cir. 1984). An appropriate order will enter.

AND NOW, THEREFORE, THIS 26<sup>th</sup> DAY OF JULY, 1995, IT IS HEREBY ORDERED THAT:

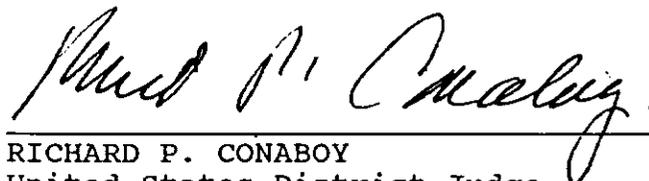
1. Plaintiff is granted temporary leave to proceed in forma pauperis.
2. The plaintiff's complaint is dismissed without prejudice as legally frivolous pursuant to 28 U.S.C. § 1915(d).

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2. Similarly, on July 24, 1995, plaintiff filed a letter with the court requesting the status of his case which he stated involved "medical malpractice terms." Document 3 of the record.

3. Since this court's decision is without prejudice, plaintiff is free to reassert his claims of negligence/malpractice by Dr. Singh in a court having proper jurisdiction. Watson is forewarned that any negligence action against the defendant must be initiated within the time period permitted under the appropriate statute of limitations.

3. The Clerk of Court is directed to close this case.
4. Any appeal from this order will be deemed frivolous, without probable cause and not taken in good faith.

  
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RICHARD P. CONABOY  
United States District Judge

RPC:jvw