

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
SCRANTON
DEC 22 1995

HOWARD ANTONIO WATSON,

Plaintiff


v.

DR. SINGH,

Defendant

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PER


DEPUTY CLERK

CIVIL NO. 3:CV-95-2123

(Judge Conaboy)

ORDER

Background

Before the court is a pro se civil rights action filed on a form for use by prisoners in filing a complaint under 42 U.S.C. § 1983.¹ The complaint is accompanied by an application to proceed in forma pauperis. For the following reasons, the motion to proceed in forma pauperis will be granted for the purpose of filing this action only and the complaint will be dismissed as legally frivolous under 28 U.S.C. § 1915(d).

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,

1. A plaintiff, in order to state a viable § 1983 claim, must plead 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 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).

presents an indisputably meritless legal theory, or is predicated on clearly baseless factual contentions. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989); Wilson v. 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 v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1734 (1992).

The plaintiff is Howard Antonio Watson, an inmate presently confined at the State Correctional Institution, Coal Township, Pennsylvania. Watson names as sole defendant Dr. Singh, who is identified as a physician at Watson's former place of confinement, the State Correctional Institution, Camp Hill, Pennsylvania. The following is Watson's Statement of Claim in toto, including the spelling and grammatical errors:

My proclamation of medical malpractice derives from Dr. Singhs faulty prescription of medication by him dated Nov 26/93-Dec 14/93. From this medication bacterialized my blood system of adhering a skin diseased disorder that is accumulating excessive blotching and peeling of my skin severly and being painful spreading over 50% of my body; arms chest/ stomach; thighs; buttocks, waist and foot areas. Prescribed medications of now six skin ointments over a year and a half period doesn't help the diseased areas at all. I also like to have a court order to seek a doctor

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 v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990) (quoting Sultenfuss v. Snow, 894 F.2d 1277, 1278 (11th Cir. 1990)). Clearly baseless factual contentions describe scenarios "clearly removed from reality." Id.

at a hospital of my choice, to cure it.

Statement of Claim, Doc. 1 of the record, p. 3.

Pro se parties are accorded substantial deference and liberality in federal court. *Haines vs. Kerner*, 404 U.S. 519 (1972); *Hughes v. Rowe*, 449 U.S. 5 (1980). Construing Watson's complaint liberally, as we must do, it raises a claim of inadequate medical care in violation of the Cruel and Unusual Punishments Clause of the Eighth Amendment.

Claims based upon the Cruel and Unusual Punishments Clause have both objective and subjective components. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). Serious hardship to the prisoner is required to satisfy the Eighth Amendment's objective component. Id. The subjective component is met if the person or persons causing the deprivation acted with "a sufficiently culpable state of mind". Id.

In the context of medical care, the relevant inquiry is whether defendants were: (1) deliberately indifferent (the subjective element) to (2) plaintiff's serious medical needs (the objective element). *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326, 346 (3d Cir. 1987); *West v. Keve*, 571 F.2d 158, 161 (3d Cir. 1979). Because only flagrantly egregious acts or omissions can violate this standard, mere medical malpractice can not result in an Eighth Amendment violation, nor can disagreements over a prison physician's medical judgment. *White v. Napoleon*, 897 F.2d 103, 108-10 (3d Cir. 1990).

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...." Estelle v. Gamble, 429 U.S. 97, 106 (1976).

Assuming without deciding, that Watson's medical needs were serious in the constitutional sense, the allegations in the complaint amount to nothing more than Watson's subjective disagreement with the treatment decisions and medical judgment of the defendant. At most the conclusory allegations in the complaint only rise to the level of mere negligence. In fact, Watson's couches his complaint in terms of negligence and medical malpractice -- "proclamation of medical malpractice" and "faulty prescription of medication." As simple negligence can not serve as a predicate to liability under § 1983, Hudson v. Palmer, 468 U.S. 517 (1984), Watson's civil rights complaint fails to articulate an arguable claim under § 1983. See White v. Napoleon, 897 F.2d at 108-110.

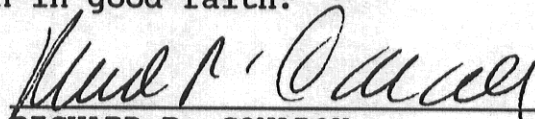
Under the circumstances, the court is confident that service of process is not only unwarranted, but would waste the increasingly scarce judicial resources that § 1915(d) is designed to preserve. See Roman v. Jeffes, 904 F.2d 192, 195 n. 3 (3d Cir. 1990).

AND NOW, THEREFORE, THIS *J. J. [Signature]* DAY OF DECEMBER, 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).
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.



RICHARD P. CONABOY
United States District Judge

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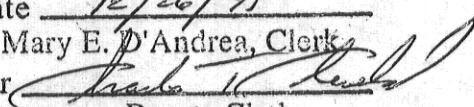
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DEPUTY CLERK

Certified from the record

Date 12/26/95

Mary E. D'Andrea, Clerk

Per 

Deputy Clerk