

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

FILED MAR 18 1996

CALVIN WESLEY : CIVIL ACTION  
v. :  
OFFICER GERALD MOODY : NO. 96-2083

M E M O R A N D U M

JAMES MCGIRR KELLY, J.

MARCH 18, 1996

Plaintiff, an inmate at the State Correctional Institution at Graterford, has filed a pro se 42 U.S.C. § 1983 civil rights complaint against Philadelphia Police Officer Gerald Moody. Plaintiff alleges that while he was in police custody, Officer Moody threatened him and his child, causing him mental distress. He seeks damages.

With his complaint, plaintiff filed a request to proceed in forma pauperis. As it appears he is unable to pay the cost of commencing this action, leave to proceed in forma pauperis is granted. However, for the reasons which follow, the complaint will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d).

The use of words, no matter how violent, does not amount to a constitutional violation. Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir. 1973), cert. denied, 414 U.S. 1033 (1973). Where plaintiff has not been physically assaulted, the defendant's words and gestures alone are not of constitutional merit. McFadden v. Lucas, 713 F.2d 143, 146-47 (5th Cir. 1983),

cert. denied, 464 U.S. 998 (1983); see also Murray v. Woodburn,  
809 F. Supp. 383 (E.D. Pa. 1993).

An appropriate order follows.

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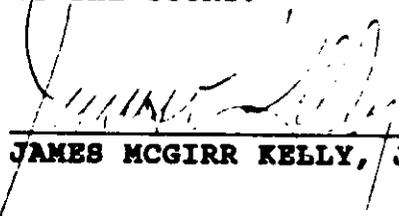
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O R D E R

AND NOW, to wit, this 16<sup>th</sup> day of March, 1996, since it appears plaintiff is unable to prepay the costs of commencing this suit pursuant to 28 U.S.C. § 1915(a), IT IS ORDERED that leave to proceed in forma pauperis is GRANTED.

IT IS FURTHER ORDERED that the Complaint is DISMISSED AS FRIVOLOUS pursuant to 28 U.S.C. § 1915(d).

BY THE COURT:

  
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JAMES MCGIRR KELLY, J.