

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

PATRICK JENKINS : CIVIL ACTION
 :
 v. :
 :
 NICOLE CUCCINOTTA :
 DIRECTOR OF KINTOCK :
 GROUP COMMUNITY CORRECTION CENTER : NO. 99-2636

MEMORANDUM AND ORDER

HUTTON, J.

January 13, 2000

I. BACKGROUND

Plaintiff, an inmate at the Rockview State Correctional Institution, filed a complaint against the Directory of the Kintock Group Community Correctional Center ("Kintock") for allegedly violating his constitutional rights under 42 U.S.C. § 1983 and for "Abuse of Discretion." On January 13, 1998 the Board of Probation and Parol determined that Plaintiff was eligible for parol, provided that he complied with the conditions set forth in its Decision. One such condition was that Plaintiff could not obtain any subsequent misconducts. (See Bd.'s Decision at 2, dated Jan. 13, 1998). On April 13, 1998, Plaintiff's urine tested "positive" for drugs and a "misconduct" was issued.¹ As a result of this

1. Plaintiff's complaint makes an unsubstantiated averment that such positive urine test was "bogus." In a motion to dismiss, "a court need not credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3rd Cir. 1997). Further, Plaintiff does not claim that Defendant or anyone under her control caused such test to be "bogus." Still further, Plaintiff
(continued...)

misconduct, Plaintiff's parole eligibility was revoked on June 25, 1998.

It appears from Plaintiff's pro se complaint that he alleges that as a result of the Director's withholding of a January 13, 1998, "green sheet," establishing Plaintiff's parole eligibility, that his due process rights were violated because his parole eligibility was revoked after his urine tested positive for drugs some 90 days later. In addition, Plaintiff alleges that the Director's withholding of this "green sheet" was the result of invidious discrimination. In response to Defendant's motion to dismiss Plaintiff clarifies his claim, stating that "plaintiff is not claiming that he had a right to parole, nor is plaintiff claiming in this complaint that the board improperly recinded [sic] his parole; plaintiff is claiming that the defendant **improperly** and **unlawfully** interfered with this process **after** he had been granted the privilege of parole, creating unlawful, unnecessary, and improper delay." (emphasis in original) (See Pl.'s Resp. to Def.'s Mot. to Dismiss at ¶ 4).

II. STANDARD OF REVIEW

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure

1. (...continued)
acknowledges that the Parole Board did not improperly revoke his parole eligibility as a result of the misconduct report. (See Pl.'s Resp. to Def.'s Mot. to Dismiss ¶ 4).

12(b)(6),² this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The Court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). However, "a court need not credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3rd Cir. 1997).

To state a cause of action under 42 U.S.C. § 1983, the Plaintiff must show that the wrongdoer violated a federal right of the Plaintiff and that they did so under the color of state law. See Groman v. Twp. of Manalapan, 47 F.3d 628, 638 (3rd Cir. 1995).

III. DISCUSSION

It appears upon review of the complaint that Plaintiff presents a remarkable claim to the Court. Mainly that, had he been aware of the January 13, 1998, Parole Board Decision, he would not

2. Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

have tested positive for "drug use" on April 13, 1998. (See Pl.'s Cmpl. ¶ 11 (stating that as a direct result of a misconduct, Plaintiff's parol eligibility was rescinded)).

A. Section 1983 Claims

Plaintiff's § 1983 claims present no meritorious position which supports the finding that any delay by Defendant in presenting Plaintiff with his "green sheet" caused him harm. Plaintiff does not claim that Defendant, or her agents, caused him to test positive for drug use, nor does he claim that he would have been released by April 13, 1998, had he been aware of the January 13, 1998 Decision. In fact, the January 13, 1998 Decision sets no release date, or time frame for Plaintiff's release.

The nature of the Parole Board's decision, also brings to the Court's attention an additional misconception in Plaintiff's complaint. Throughout his complaint and responses Plaintiff states that he was "granted" parole. Such a conclusion is without support, as the Parol Board's decision simply found him eligible for parole pending the satisfaction of certain conditions. (See Bd.'s Decision at 2, dated Jan. 13, 1998); see also Johnson v. Rendell, 56 F. Supp.2d 547, 551-52 (E.D. Pa. 1999) (stating that a conditional decision of the parole board does not impart the status of parolee upon a candidate for parole). As such, Plaintiff as a matter of law had "no liberty interest or entitlement to parole

that must be protected with procedural safeguards." Jubilee v. Horn, 959 F. Supp. 276, 279 (E.D. Pa. 1997).

Further, although case law in this District supports the conclusion that a parole candidate possess a substantive due process and equal protection right against arbitrary and capricious denials of parole, Plaintiff's complaint states no such situation. See Jubilee, 959 F. Supp. at 279-80 (finding that malicious and intentional delays in completing paperwork and the singling out of an individual for harsher treatment in the parole process supported a claim of substantive due process and equal protection).

First, by Plaintiff's own admission, his denial of parol was not caused by any claimed delay or discrimination on the part of Defendant, but rather it originated from a "misconduct" report resulting from a positive drug test. (See Pl.'s Cmpl. ¶ 11). Further, Plaintiff does not suggest that Defendant was responsible for any wrongdoing with respect to this test, nor does he claim that such test caused him to be treated harsher than similarly situated individuals.

As such, Plaintiff as a matter of law has failed to set forth a prima facie case under 42 U.S.C. § 1983 because he has failed to establish a set of circumstances which would show that Defendant's delay in providing his "green sheet" resulted in the deprivation or violation of a federal right. Rather, Plaintiff has conclusively demonstrated that he violated the very terms of his

parole eligibility by obtaining a "misconduct" for drug use subsequent to the Parole Board's January 13, 1998 Decision.

B. Abuse of Discretion

The final claim in Plaintiff's complaint is one for "Abuse of Discretion." The Court need not delve deeply into the merits of such a claim as it is clear that such a claim must fail based upon the facts as alleged in Plaintiff's complaint.

Plaintiff claims that the Defendant abused her discretion by improperly withholding a "green sheet" from him. As discussed, however, Plaintiff fails to show that such a delay in any way caused him to suffer harm. See, e.g., Tate & Lyle, Inc. v. Comm'r of Internal Revenue Service, 87 F.3d 99, 107 (3rd Cir. 1996) (stating that to find abuse of discretion the application of a regulation must be relied upon and its alteration must cause harm); United States v. Adams, 759 F.2d 1099, 1111 (3rd Cir. 1985) (stating that abuse of discretion requires a showing of prejudice). Rather, Plaintiff's own failure to pass a drug test led to the revocation of his parole eligibility, and not an event proximately caused by Defendant's alleged delay. As such, Defendant's nonfeasance simply has not caused any compensable harm.

An appropriate Order follows.

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O R D E R

AND NOW, this 13th day of January, 2000, upon consideration of Defendant's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Docket No. 7), IT IS HEREBY ORDERED that Defendant's Motion is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Plaintiff's Complaint in its entirety is **DISMISSED WITH PREJUDICE**.

BY THE COURT:

HERBERT J. HUTTON, J.