

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

EDWARD C. KELLEY,
Plaintiff

CIVIL ACTION

v.

TERESA M. LAW et al,
Defendants

NO. 02-1457

MEMORANDUM AND ORDER

McLaughlin, J.

April 29, 2003

The plaintiff, Edward C. Kelley, is a pro se prisoner who has sued various Pennsylvania Department *of* Corrections ("DOC"), State Correctional Institution at Graterford ("SCI-Graterford"), and State Correctional Institution at Camp Hill ("SCI-Camp Hill") officials. The plaintiff brings a civil rights claim pursuant to 42 U.S.C. § 1983, alleging that the defendants violated his Eighth and Fourteenth Amendment rights. The plaintiff also brings a claim under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 ~~et seq.~~

The defendants allegedly violated the plaintiff's constitutional rights by denying the plaintiff medical care, serving him rotten food, not fixing his broken toilet for six days, not protecting him from staff and other inmates, interfering with his access to the courts, violating DOC

policies, and discriminating against white inmates. The plaintiff claims that the defendants violated his ADA rights by discriminating against him based on his impaired vision and hearing and his high blood pressure.

Defendants Jeffrey A. Beard, Clifford H. O'Hara, and Catherine McVey are DOC officials. Defendants Donald Vaughn, Julie Knauer, Leslie Hatcher, A.J. Kovalchik, Francis Feild, David DiGuglielmo, Lester Moore, Gerald Galinski, Gerald Sobotor, William Radle, Ismael Soler, Robert Crawford, James Gary Demuth, and Alonzo Jackson are either current or former SCI-Graterford officials. Defendant Teresa Law is an official at SCI-Camp Hill.

Pending before the Court are motions to dismiss filed on behalf of two groups of defendants. All of the defendants have moved to dismiss through one of the two motions to dismiss. Both motions are brought under Federal Rule of Civil Procedure 12(b) (6) and the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e. The defendants argue that the plaintiff fails to state a claim and failed to exhaust his administrative remedies. The Court will grant the motions because it is clear from the plaintiff's complaint that the plaintiff failed to exhaust his administrative remedies as required by the PLRA.

I. Background

A. Facts as Alleged in the Complaint

The facts of this case, in the light most favorable to the plaintiff, are as follows.' The plaintiff is a prisoner incarcerated in the Pennsylvania State Correctional Institution ("SCI") system.²

During his incarceration in the SCI system, the plaintiff has been at SCI-Camp Hill, SCI-Graterford, and SCI-Waymart. These three facilities are administered by the Pennsylvania Department *of* Corrections.³ Tr. at 7, 8, 47-50.

¹ In considering a motion to dismiss under Rule 12(b)(6), the Court "take[s] all well pleaded allegations as true, construe[s] the complaint in the light most favorable to the plaintiff[s], and determine[s] whether under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665 (3d Cir. 1988).

² The facts surrounding the plaintiff's claims are taken from his second amended complaint (Docket No. 27) as limited and amplified by the plaintiff during the status conference in accordance with the Court's Order filed February 4, 2003 (Docket No. 52). When the Court refers to the plaintiff's "complaint," it is referring to the allegations contained in Docket No. 27, the plaintiff's second amended complaint and Docket No. 47, the transcript from the January 28, 2003 status conference.

³ The plaintiff did not number the pages of his complaint, but he separated the complaint into different sections. Hereinafter, references to the complaint will be labeled "Compl." followed by the name of the section and the paragraph number, References to the transcript from the January 28, 2003 status conference are indicated as "Tr." followed by the transcript's page number.

The problems about which the plaintiff complains can be separated into the following categories: (1) medical care; (2) food; (3) problems with other inmates and staff; and (4) sanitation problems.

1. Medical Care

The plaintiff is legally blind without his contact lenses. When the plaintiff was at SCI-Camp Hill, his contacts were taken by prison officials. He made two requests to **Ms.** Law for his contacts. He also requested an eye exam and cleaning solution for his contacts. Ms. Law did not respond to the plaintiff's request to have an eye exam or to his request for cleaning solution. The contacts were given to the plaintiff about a week or two before he left SCI-Camp Hill. Compl., Statement of Facts, at ¶ 4; Compl., Eighth and Fourteenth Amendment Violations, at ¶ 6; Tr. at 6-8, 17-18.

The plaintiff needs an eye exam twice a year for his vision problem. While at XI-Graterford, the plaintiff requested an eye exam. The eye exam was scheduled for July 2002. The plaintiff has received two eye exams since he was incarcerated, the last of which was in October 2002. Compl., Eighth and Fourteenth Amendment Violations, ¶ 6; Tr. at 6-8, **18-19.**

At SCI-Graterford, the plaintiff was not given cleaning solution for his contacts. When the plaintiff uses his contacts without cleaning the contacts, he gets an eye infection. Tr. at 7-8.

The plaintiff's blood pressure was not checked from October 2001 to May 17, 2002. On May 17, 2002, the plaintiff's blood pressure was checked. He was given two pills by the staff to control his blood pressure. Compl., ADA rights, at ¶¶ 5-7.

DOC policy required prison officials to accommodate the plaintiff's impaired vision and hearing. Under DOC policy, the prison officials were to: (1) make a notation on the plaintiff's identification card that the plaintiff had a qualified disability; (2) consider the location of the facilities needed to accommodate the plaintiff's disability when making a facility assignment; (3) assign the plaintiff to a special needs unit if his mental or physical impairments were severe enough; and (4) assign the plaintiff to a mental health unit or other facility where the needed accommodations could be provided. The prison officials violated all **of** the policies related to accommodating the plaintiff's disability. Compl., DOC Policy Violations, at ¶¶ 4-7; Tr. at 16.

Medical treatment also has been denied to the plaintiff based on his financial situation in violation of DOC policy. Compl., DOC Policy Violations, at ¶ 7; Tr. at 16.

The plaintiff believed that he did not have to exhaust his administrative remedies if he wanted to file an ADA claim. He does not know if he filed any complaints regarding his medical treatment. Compl., ADA rights, at ¶ 4; Tr. at 17.

2. Food

In October 2002, the plaintiff became ill from the food served at SCI-Graterford. He was sick for five days. A doctor saw the plaintiff four hours after he told a nurse of his condition. The plaintiff was given Pepto-Bismol two days later, and his illness went away. Tr. at 9-11.

The plaintiff also has not received two hot meals a day as required by DOC policy. Compl., DOC Policy Violations, at ¶ 4; Tr. at 17.

3. Problems with Other Inmates and Staff

Mr. Thompson put a mentally ill inmate in the plaintiff's cell. That inmate had been moved from another cell where he had been having trouble with another inmate. The mentally ill inmate was naked when he was put into the

plaintiff's cell. Compl., Statement of Facts, at ¶ 13; Tr. at 29-30.

On July 10, 2002, the plaintiff told Mr. Galinski, Mr. Moore, and Mr. Sobotor, who were members of the Program Review Committee ("PRC"), that the mentally ill inmate was not taking his medications and was a danger to the plaintiff. No action was taken by the PRC. Compl., Statement of Facts, at ¶ 15; Tr. at 11, 13, 30, 40.

Two days after the PRC proceedings, the mentally ill inmate assaulted the plaintiff. After the assault, the mentally ill inmate was moved to a special needs unit. In November or December 2002, the plaintiff complained about the mentally ill inmate to two officials from the Office of Professional Responsibility at Camp Hill. Compl., Statement of Facts, at ¶ 15; Tr. at 11-13, 30.

On a different occasion, the plaintiff wrote to security to complain about an inmate. He also complained to Ms. Hatcher, a grievance coordinator at SCI-Graterford, about this inmate. She denied the plaintiff's grievance. Compl., Statement of Facts, at ¶ 7; Tr. at 19.

The plaintiff was threatened by Mr. Feild, Mr. Crawford, and Mr. Jackson. These three individuals are officials at SCI-Graterford. Tr. at 12-15.

Mr. Feild threatened to put the plaintiff in "the hole." Mr. Feild never put the plaintiff in "the hole." Compl., Statement of Facts, at ¶ 17; Tr. at 12-13.

The plaintiff filed a complaint about Mr. Feild's threat. Mr. Feild was assigned by Ms. Hatcher to investigate the complaint. In November or December 2002, two individuals who worked in the Office of Professional Responsibility at Camp Hill talked to the plaintiff about his complaint. Compl., Statement of Facts, at ¶¶ 7, 18; Tr. at 12-13, 19.

Mr. Crawford told the plaintiff that he would put the plaintiff in "the hole" and keep him there "until [his] max date." Mr. Crawford never put the plaintiff in "the hole." Compl., Statement of Facts, at ¶ 14; Tr. at 13-14, 23.

Mr. Jackson threatened to put the plaintiff in another cell **block** and have other inmates **kill** the plaintiff. The plaintiff complained to the United States Department of Justice about Mr. Jackson. He has not heard from the Department of Justice regarding his complaint. Tr. at 14-15, 23.

The plaintiff wanted to file papers with a court. To pay the court filing fees, the plaintiff needed to obtain a prison official's signature on a cash slip. Mr. Kovalchik, a unit manager at SCI-Graterford, would not sign the cash slip. Mr. Kovalchik told the plaintiff to write to accounting. The

plaintiff wrote to Mr. Soler, an official in the security department at SCI-Graterford. The plaintiff told Mr. Soler that the plaintiff was being denied access to the Court by other prison staff in the mail room. Compl., Statement of Facts, at ¶¶ 9, 12; Tr. at 21-22, 28-29.

The plaintiff is white. With respect to serving time at SCI-Graterford, "most of the black people, they [the prison officials] cut their time, [but] most of the white people have to do their whole time." Tr. at 23.

There are several individuals named in the plaintiff's complaint who did not have personal interaction with the plaintiff. These individuals are Mr. Beard, Ms. McVey, Mr. O'Hara, Mr. Vaughn, Mr. DiGuglielmo, Ms. Knauer, and Mr. Demuth.

Mr. Beard is the head of the DOC. Ms. McVey is the Director of Health Care Services for the DOC. Compl., Statement of Facts, at ¶¶ 1, 3; Tr. at 23-24.

Mr. O'Hara is the head of the Office of Professional Responsibility. The plaintiff wrote to Mr. O'Hara explaining his complaints about the prison officials. Compl., Statement of Facts, at ¶ 2; Tr. at 23.

Mr. Vaughn is the Superintendent of SCI-Graterford. The plaintiff wrote to Mr. Vaughn a couple of times. Mr. DiGuglielmo is a Deputy Superintendent who oversaw staff at SCI-

Graterford. Ms. Knauer is the head of the medical department at SCI-Graterford. Compl., Statement of Facts, at ¶¶ 5, 6, 8; Tr. at 18-19, 27-28.

Mr. Demuth is a counselor at SCI-Graterford. Under the terms of the plaintiff's sentence, he is to receive psychiatric care. For over a year, the plaintiff was not provided with the evaluation, programs, and treatment. Mr. Demuth did not do anything to help the plaintiff get his psychiatric care. The plaintiff is now receiving his psychiatric care. Compl., Statement of Facts, at ¶ 10; Tr. at 28-29.

4. Sanitation Problems

The toilet in the plaintiff's cell was not working for six days. He complained to Mr. Radle, an official at SCI-Graterford, about the broken toilet. The plaintiff asked to be moved to another cell where the toilet worked. Mr. Radle did not move the plaintiff to another cell, but the toilet was fixed. Compl., Statement of Facts, at ¶ 16; Tr. at 11, 24-25.

There is a plumbing problem that causes floods in the block at the prison in which the plaintiff is housed. Additionally, the plaintiff's cell had inadequate ventilation and

water that was not working for thirty days out of a sixty day period. Compl., Eighth and Fourteenth Amendment Violations, at ¶ 3; Tr. at 11.

B. Grievance Procedure

The DOC has established an inmate grievance system through Policy Number DC-ADM 804.⁴ For every problem raised by

⁴ In addition to the facts alleged in the plaintiff's complaint, the Court considers the DOC policy for inmate grievances. This policy is DC-ADM 804, which is attached as Exhibit D7 to the motion to dismiss filed on February 12, 2003 (Docket No. 78). The defendants attached several other documents to their motions to dismiss, but the Court does not consider these documents.

Generally, on a motion to dismiss under Federal Rule of civil Procedure 12(b) a court may only consider the material within the plaintiff's pleadings. Considering material outside of the pleading has the effect of converting the motion to dismiss into a summary judgment motion.

There are exceptions to the general rule. A motion to dismiss is not converted into a summary judgment motion when the materials outside of the plaintiff's pleading that are considered are: (1) public records deemed to be undisputably authentic or (2) materials directly relied upon in the plaintiff's complaint. See City of Pittsburgh v. West Penn Power Co., 147 F.3d 256, 259 (3d Cir. 1998); Pension Benefit Guar Corp. v. White Consol. Indus., Inc., 988 F.2d 1192, 1196 (3d Cir. 1993).

The only document attached to the motions to dismiss that clearly fits within these exceptions is Exhibit D7. DC-ADM 804 is a public record whose authenticity is not disputed. The Third Circuit has considered the grievance procedure outlined in DC-ADM 804 when reviewing whether dismissal of a suit for failure to exhaust was appropriate. See, e.g., Mitchell v. Horn, 318 F.3d

an inmate, there is a three step review process. The first step provides for review of the grievance. The other two steps are avenues of appeal. The three step process is known as the Inmate Grievance System. Mot. to Dismiss, Feb. 12, 2003, Ex. 7, at D7-1, D7-3.

To start the grievance process, an inmate must submit a DC-ADM 804, Part 1, Grievance Form. The grievance must be submitted within fifteen working days of the event. Grievances and appeals based on different events must be presented separately unless it is necessary to combine the issues to support the claim. Id. at D7-4, D7-5.

At the first stage of review, a grievance is reviewed by the Facility Grievance Coordinator. This individual determines whether the grievance has been filed in accordance with the grievance policy. If the grievance is not filed in accordance with the policy, the inmate is given five working days to resubmit the grievance. If the grievance has been filed in accordance with the policy, the Facility Grievance Coordinator shall designate a staff member to serve as a Grievance Officer.

523, 527, 529 (3d Cir. 2003); Brown v. Croak, 312 F.3d 109, 111-12 (3d Cir. 2002); 206 F.3d 289, 293 n.2 (3d Cir. 2000) aff'd 532 U.S. 731 (2001).

The Grievance Officer reviews the inmate's grievance and decides the merits of the grievance. Id. at D7-6.

At the second stage of review, an inmate may appeal the decision to the Facility Manager. The appeal is limited to those issues that were raised at the first stage of review and determinations by a Grievance Coordinator that a grievance was frivolous. The appeal must be filed within five working days of when the inmate receives the decision from the first stage of review. Id. at D7-7.

At the third stage of review, an inmate may appeal to the Secretary's Office of Inmate Grievances and Appeals. This is the final level of review of a grievance. The appeal must be filed within five working days of when the inmate receives the decision from the second stage of review. Id. at D7-9.

11. Analysis

Under the Prison Litigation Reform Act of 1995 ("PLRA"), "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 any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The PLRA's exhaustion requirement applies to "all inmate suits about prison

life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." See Porter v. Nussle, 534 U.S. 516, 524, 532 (2002).

Dismissal of a prisoner's suit is appropriate when a prisoner's complaint reveals that the prisoner has not exhausted his administrative remedies. The complaint may be dismissed because it facially violates a bar to suit. Ray v. Kertes, 285 F.3d 287, 293 n.5 (3d Cir. 2002); see, e.g., Booth v. Churner, 206 F.3d 289, 293 (3d Cir. 2000) aff'd 532 U.S. 731 (2001); Nyhuis v. Reno, 204 F.3d 65, 66 (3d Cir. 2000).

The grievance procedure established by DC-ADM 804 is the administrative remedy available to all inmates in the SCI system. Exhausting the grievance procedure requires the plaintiff to file a grievance and pursue the two avenues of appeal in accordance with the procedures outlined in DC-ADM 804 on each individual complaint. The question raised **by** the defendants' motions to dismiss is whether the plaintiff has exhausted his administrative remedies for each claim in his complaint.

In his complaint, the plaintiff makes several statements about the steps he took to resolve his problems at the prison. In all of the statements about what actions he took to have his complaints resolved, he lists only two instances in

which he filed a grievance under DC-ADM 804. The plaintiff filed a grievance regarding the problems he was having with another inmate, which was denied by Ms. Hatcher. He also filed a grievance about Mr. Feild's threats, which Ms. Hatcher referred to Mr. Feild to investigate. The plaintiff also claims that he did not have to pursue his administrative remedies for an ADA claim. There are no allegations in the plaintiff's complaint that **he**: (1) exhausted his administrative remedies for any of his claims; (2) ever pursued the two avenues of appeal available under DC-ADM 804 for the two grievances he filed; or (3) ever filed a grievance for any of his other complaints.

In his opposition to the motions to dismiss, the plaintiff argues that he exhausted his administrative remedies by: (1) complaining to the PRC about the mentally ill inmate and (2) writing to Mr. Soler about prison officials not signing the plaintiff's cash slip when he wanted to file documents with the court. The plaintiff also admits that he did not file a grievance regarding the broken toilet because he believed that Ms. Hatcher would deny the grievance.'

⁵ In deciding the defendants' motions to dismiss, the Court considered the plaintiff's complaint (Docket Nos. 27 and 47); the defendants' motions to dismiss (Docket Nos. 78 and 86); and the subsequent filings made by the plaintiff in response to the motions to dismiss (Docket Nos. 79, 89, 90, 92, 9, and 98).

The plaintiff's completion of the first step of the grievance process for two of his many claims is not enough to exhaust his administrative remedies. See Booth, 206 F.3d at 292-93. In Booth, the plaintiff filed a grievance pursuant to DC-ADM 804 for his claims. He made no showing that had taken the second and third steps in the grievance process. Dismissal was appropriate because it was clear from the face of the plaintiff's complaint that the plaintiff failed to exhaust his administrative remedies. Id. at 293. Similarly to the plaintiff in Booth, the present plaintiff has alleged that he participated in the first step of the grievance process for two of his complaints without alleging any further participation in the grievance process. As it was clear from the plaintiff's complaint in Booth that the plaintiff had not exhausted his administrative remedies, it is clear from the plaintiff's complaint that he has not exhausted his administrative remedies.

The plaintiff's statement that he did not have to exhaust his administrative remedies before bringing an ADA claim is both an incorrect statement of the law and further support for finding that the plaintiff failed to exhaust. Under the PLRA, the plaintiff was required to exhaust his administrative remedies for any claim based on federal law. See Nussle, 534 U.S. at 524, 532. The result is that an ADA claim cannot proceed without

exhausting the available administrative remedies. Additionally, in none of the plaintiff's filings has the plaintiff refuted the suggestion from his statement about an ADA claim that he has not exhausted his administrative remedies.

The plaintiff's argument that he exhausted his administrative remedies by complaining to the PRC and writing Mr. Soler only provides further support for the proposition that he has not exhausted his administrative remedies. DC-ADM 804 provides a detailed three step review process for all inmate grievances. Complaining to the PRC and writing to an official not involved in the grievance process are not within the grievance process outlined in DC-ADM 804. The plaintiff's assertion that he has exhausted his administrative remedies is **not** supported by any of the facts that he has alleged in either his complaint or his responses to the motions to dismiss.

The plaintiff's admission that he did not file a grievance regarding the broken toilet is enough by itself to dismiss the plaintiff's complaint for failure to exhaust. The plaintiff's belief that Ms. Hatcher would deny the grievance does not excuse the PLRA's exhaustion requirement. That it may be futile to pursue administrative remedies or that a plaintiff may not get the desired relief from the administrative remedies does not mean administrative remedies were truly unavailable to the

plaintiff.⁶ See Booth v. Churner, 532 U.S. 731, 741 (2001); Concepcion v. Morton, 306 F.3d 1347, 1351 (3d Cir. 2002).

The plaintiff's complaint is not of the type that the Third Circuit has found to be inappropriate to dismiss for failure to exhaust. Dismissal would be inappropriate if the Court sua sponte dismissed the complaint based on the plaintiff's failure to make any allegations about what actions he took to

⁶ The defendants point out in their motion to dismiss filed on February 12, 2003, that after the January 28, 2003 status conference the Court issued an order removing Mr. Thompson as a defendant (Docket No. 51). At that time, the Court believed that the plaintiff was not intending to sue Mr. Thompson. The Court reached this conclusion because after discussing the facts underlying the plaintiff's complaint and going through many of the officials named in documents that the plaintiff filed with the Court, the Court asked the plaintiff if there was anyone else he intended to sue. The plaintiff stated that there was not. At that point the plaintiff had not mentioned Mr. Thompson, but he had already described some of the problems with the mentally ill inmate. Placing the mentally ill inmate in the plaintiff's cell is the only action that the plaintiff alleges Mr. Thompson took. Compl., Statement of Facts, at ¶ 13; Tr. at 11-13, 25, 29-30.

When the plaintiff stated that there was no one else he intended to sue, the Court interpreted this to mean that the plaintiff no longer wanted to maintain a claim against Mr. Thompson. Mr. Thompson no longer appears in the caption of this case, and he has not been served by the plaintiff. The plaintiff, however, stated in his "Motion Not to Dismiss and Appeal to Grant Judgment for Plaintiff" that he did state a claim against Mr. Thompson. Pl. Mot., Plaintiff's Allegations, at ¶ 3.

The exhaustion analysis applies with equal force to the claims against Mr. Thompson, and the Court has the inherent power to dismiss the complaint against Mr. Thompson because it facially violates a bar to suit. See Ray, 285 F.3d at 293 n.5.

exhaust. Dismissal is also inappropriate if the plaintiff has made allegations that allow the PLRA's exhaustion requirement to be excused. For example, dismissal would be inappropriate if the plaintiff alleged that he was denied the forms on which to file a grievance under DC-ADM 804. See Mitchell v. Horn, 318 F.3d 523, 527, 529 (3d Cir. 2003). Another situation when dismissal is inappropriate is when a plaintiff alleges that: (1) he completed the grievance process; (2) he explained that he was not allowed to file a grievance under DC-ADM 804 for claims that were also the subject of concurrent disciplinary proceedings; and (3) the Chief Hearing Examiner at the prison stated that the plaintiff exhausted all available administrative remedies with respect to the disciplinary procedures at the prison. See Ray, 285 F.3d at 294-97.

The complaint and the documents presented to the Court by the plaintiff reveal that he has not exhausted his administrative remedies. Unlike the plaintiff in Mitchell and like the plaintiff in Booth, the plaintiff in the present case stated what actions he took to remedy his problems without mentioning more than the first step of the grievance process. At most, the plaintiff completed the first step of the grievance process for two of his claims, but this does not satisfy the PLRA's exhaustion requirement. Additionally, the plaintiff in

Mitchell alleged facts sufficient to excuse exhaustion. The plaintiff has made no allegations that allow the PLRA's exhaustion requirement to be excused. The plaintiff's case is also not similar to Ray because the plaintiff has not alleged that he completed the grievance process. Instead, the plaintiff alleged that he exhausted his administrative remedies by taking actions that have nothing to do with the grievance process. That the plaintiff relies on actions unrelated to the grievance process as proof of exhaustion bolsters the conclusion that he did not exhaust the administrative remedies provided for in DC-ADM 804 for each of his claims.

Finally, dismissal of the plaintiff's suit is consistent with the purposes of the PLRA. In enacting the PLRA's exhaustion requirement, Congress expressed a desire to: (1) lessen the burden frivolous claims place on federal courts; (2) allow prison officials in the first instance the opportunity to address problems at the prison without interference from federal courts; and (3) facilitate adjudication of those cases that come to court by clarifying the contours of the controversy. See Nussle, 534 U.S. at 524-25; Ray, 285 F.3d at 294.

All three purposes identified by Congress for enacting the PLRA are served by dismissing the plaintiff's complaint. First, complaints about whether the plaintiff's toilet was fixed

quickly enough and whether the plaintiff receives two hot meals a day are frivolous. Second, by the plaintiff's own admission several of his complaints appear to have been resolved. As far as the Court can discern, the plaintiff has received: (1) two eye exams; (2) his contact lenses; (3) Pepto-Bismol to cure the illness he suffered as a result of the food served at **SCI-Graterford**; (4) a fixed toilet; (5) removal of the mentally ill inmate from his cell, and (6) access to the courts. That many of the plaintiff's problems have been addressed underscores the point that prison officials are in better position than a federal court to provide more immediate relief when an inmate has problems like whether he received his contact lenses. Third, given that many of the plaintiff's problems appear to have been resolved, it is not clear what the contours of the controversy presented to this Court are.

Because it is clear from the plaintiff's complaint that the plaintiff has failed to exhaust his administrative remedies for at least some of his claims, dismissal of his suit is appropriate.

An appropriate order follows.

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

EDWARD C. KELLEY,
Plaintiff

CIVIL ACTION

v.

TERESA M. LAW et al,
Defendants

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:
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NO. 02-1457

ORDER

AND NOW, this 29 day of April, 2003, upon consideration of the Motion to Dismiss filed by defendants Jeffrey A. Beard, Clifford H. O'Hara, Catherine McVey, Teresa Law, Donald Vaughn, Julie Knauer, Leslie Hatcher, A.J. Kovalchik, and Francis Feild (Docket No. 78), the motion to dismiss of Defendants David DiGuglielmo, Lester Moore, Gerald Galinski, Gerald Sobotor, William Radle, Ismael Soler, Robert Crawford, James Gary Demuth, and Alonzo Jackson (Docket No. 86); the plaintiff's opposition to the motions to dismiss as contained in the plaintiff's Motion Not to Dismiss and Appeal to Grant Judgment for Plaintiff (Docket No. 79), the plaintiff's Motion to File a 59(a) to Not to Dismiss (Docket No. 89), the plaintiff's Motion to Dismiss all Memorandums of Law Claims by Defendants to Dismissal Under Any Grounds (Docket No. 96); the supplemental

filings of the parties, and following an on the record status conference on January 28, 2003, IS HEREBY ORDERED that:

1. The defendants' motions to dismiss (Docket Nos. 78 and 86) are GRANTED for the reasons set forth in a memorandum of today's date;

2. The plaintiff's motions (Docket Nos. 79, 89, and 96) are DENIED because the defendants' motions to dismiss have been granted for the reasons set forth in a memorandum of today's date.

BY THE COURT:


MARY A. MCLAUGHLIN J.