

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

RONALD WESLEY, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
N. HOLLIS, et al., :  
Defendants. : No. 03-3130

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**APRIL 29, 2004**

Presently before the Court is a Motion to Dismiss, in Part, Plaintiff's Complaint filed by Defendants Correctional Officer Nathaniel Hollis ("Hollis"), Correctional Officer Kevin Marsh ("Marsh") and Internal Security Lieutenant Kenneth Eason ("Eason") (collectively, "Defendants") requesting that this Court dismiss some of the claims set forth in the Complaint filed by pro se Plaintiff Ronald Wesley ("Plaintiff" or "Wesley"), an inmate incarcerated at the State Correctional Institution at Graterford, Pennsylvania ("Graterford"), against Defendants in their individual capacities.<sup>1</sup> Defendants move for dismissal of

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<sup>1</sup> Plaintiff brought this action pursuant to 42 U.S.C. § 1983, which provides, in pertinent part:

Every person who, under color of statute, ordinance, regulation, custom, or usage, or any State . . . subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

the following claims pursuant to Federal Rule of Civil Procedure 12(b)(6): (1) First Amendment access to courts claim against Hollis for allegedly kicking and confiscating Plaintiff's legal materials; (2) Fourteenth Amendment procedural due process claim against Hollis for allegedly writing a false misconduct report; (3) retaliation claim against Hollis; (4) conspiracy claim against Hollis and Marsh; (5) claim against Eason for conducting a delayed and incomplete investigation of the alleged assault; and (6) pendent state law claims against all Defendants. For the following reasons, Defendants' Motion to Dismiss, in Part, Plaintiff's Complaint is **GRANTED IN PART** and **DENIED IN PART**.

#### I. BACKGROUND

For the purpose of ruling on this Motion to Dismiss, we recite the facts as alleged by Plaintiff and accept his allegations as true.

On June 10, 2001, Correctional Officer Hollis appeared at Wesley's cell in the Restricted Housing Unit and announced a cell search. Hollis handcuffed Wesley through the opening in the cell door, called control operations to open the door and instructed Wesley to exit the cell. Hollis frisked Wesley, then entered his cell and began the search.

During the cell search, Wesley observed Hollis going through a stack of his "legal-related work-product materials." (Compl. ¶

E.6.) Hollis extracted "contrasting tablet-back materials from the stack and tossed them to the floor, as though they were trash." (Id.) Wesley objected to Hollis that the tablet-back materials were legal-related work-product relating to pending and contemplated civil rights and habeas proceedings. Hollis insisted that the tablet-back material was contraband.

Wesley called Lieutenant Marsh, who was standing nearby, and asked him to instruct Hollis to stop trashing his legal-related materials. Marsh entered the cell, spoke briefly to Hollis, and left the cell.

Hollis concluded his search. While leaving the cell, he swept the tablet-back legal-related materials out of the cell with his feet. Wesley tried to kick the materials back into his cell, but Hollis prevented him from doing so. Wesley requested a confiscation receipt, as required by Department of Corrections policy, for the tablet-back materials from Hollis. Hollis refused, stating, "I'm throwing the stuff in the trash." (Compl. ¶ E.11.)

Wesley was then ordered to return to his cell. After the cell door was closed, he stood with his back to the door to enable Hollis to remove the handcuffs. Under the guise of removing the handcuffs, Hollis grabbed the cuffs, yanking them with enough strength and force to tighten the cuffs on Wesley's wrists to cause Wesley's back and head to bang into the steel

cell door. Wesley screamed and pleaded with Hollis to let go of the cuffs, stating "You're gonna break my wrists." (Compl. ¶ E.14.) Hollis refused to release his hold on the cuffs, even as Wesley twisted in pain and agony while attempting to pull away.

Hollis held onto the handcuffs for approximately five minutes. Although at least six officers, including Marsh, stood nearby, none of them intervened at first. Eventually, Marsh stopped the assault, by ordering Hollis to let go of the cuffs and give him the key. Hollis let go of the cuffs, pulled the key from his pocket, and handed it to Marsh. Marsh then struck the key into the lock and removed the cuffs from Wesley's wrists.

Wesley's hands and wrists were badly bruised, swollen, and bleeding. He hollered to Marsh to have him taken to the infirmary for treatment and to notify the State Police of his intent to file a complaint for an investigation.

Several minutes later, two officers appeared at Wesley's cell to escort him to the infirmary.

Later that day, Wesley was served with a misconduct report written by Hollis, in which Hollis blamed Wesley for provoking the assault, by refusing to obey his orders to be uncuffed.

On June 10, 2001, Wesley submitted a grievance against Hollis. On June 12, 2001, he submitted a request to Deputy Superintendent of Internal Security, Mr. Lorenzo, requesting investigations by the internal security department and the State

Police. Consequently, on June 23, 2001, Eason, a lieutenant in Graterford's internal security department, interviewed Wesley.

On July 11, 2001, Eason notified Wesley in writing that he found Wesley's allegations of assault by Hollis to be "unsubstantiated." (Compl. ¶ E.28.)

On July 7, 2003, Plaintiff filed a Complaint seeking damages, and declaratory and injunctive relief against Defendants. Defendants now move for partial dismissal of Plaintiff's Complaint, contending that Plaintiff fails to state viable claims for relief under § 1983 and that, further, sovereign immunity bars his pendent state law claims.<sup>2</sup>

We address, in turn, the sufficiency of each of Plaintiff's claims for which Defendants move for dismissal.

## II. STANDARD OF REVIEW

The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of a complaint. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). We therefore accept all factual allegations in the complaint as true and give the pleader the benefit of all reasonable inferences that can be fairly drawn therefrom. Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). We are

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<sup>2</sup> Contemporaneously with this Motion to Dismiss, Hollis and Marsh have filed an Answer to Plaintiff's Eighth Amendment excessive force claims.

not, however, required to accept legal conclusions either alleged or inferred from the pleaded facts. Kost, 1 F.3d at 183. A court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

### **III. DISCUSSION**

#### **A. First Amendment Access to Courts Claim**

Plaintiff attempts to assert a First Amendment access to courts claim against Hollis by alleging that Hollis kicked Plaintiff's "tablet-back legal-related materials" out of his cell and threatened to trash them. While it is unclear from Plaintiff's Complaint whether Hollis confiscated the materials and/or threw out the materials, Plaintiff's response to Defendants' partial Motion to Dismiss specifies that his materials were "confiscated & destroyed." (Pl.'s Resp. at ¶ 2.) Even assuming that Hollis never returned the legal materials, Plaintiff nevertheless fails to state an access to courts claim.

Denial of access to legal documents may constitute a violation of a prisoner's First Amendment right to petition the courts and/or Fourteenth Amendment due process rights. Zilich v. Lucht, 981 F.2d 694, 695 (3d Cir. 1992). However, to state a cognizable claim for violation of the right to access to the courts, a prisoner must allege and offer proof that he suffered

an "actual injury" to court access as a result of the denial. Oliver v. Fauver, 118 F.3d 175, 177-78 (3d Cir. 1997). The United States Supreme Court has defined actual injury in the access to courts context as the loss or rejection of a nonfrivolous legal claim regarding sentencing or the conditions of confinement. See Lewis v. Casey, 518 U.S. 343 (1996). Here, Plaintiff's Complaint alleges only that Plaintiff's legal materials were taken away, but does not allege that his efforts to pursue a legal claim were actually hindered.<sup>3</sup> See id. at 351. Since Plaintiff fails to allege the requisite "actual injury" in connection with the confiscation of his legal materials, his First Amendment access to courts claim must be dismissed for failure to state a claim.

#### **B. Fourteenth Amendment Due Process Claim**

Plaintiff attempts to assert a Fourteenth Amendment due process claim against Hollis for allegedly writing a false misconduct report. Plaintiff's claim, however, is not cognizable

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<sup>3</sup> Plaintiff claims that his legal materials related to pending and contemplated civil rights claims and a habeas petition. (Compl. ¶ 7.)

In his Response to Defendants' Motion, Plaintiff specifies that the legal materials were related to his civil rights matters docketed at Civ. A. Nos. 99-1228 and 99-1229, which matters were dismissed by this Court during trial in the form of a directed verdict. (See Pl.'s Resp. ¶ 2.) Indeed, it would be difficult for Plaintiff to advance an argument that his efforts to pursue that legal claim were actually hindered.

under the Constitution. A misconduct report, whether true or false, even if it leads to the imposition of disciplinary action, does not in and of itself trigger the protection of the Due Process Clause. See Sandin v. Conner, 515 U.S. 472, 486 (1995) (concluding that administrative or disciplinary action does not establish "atypical" deprivation of prison life necessary to implicate a liberty interest). Furthermore, a claim by a prisoner that he was falsely accused of misconduct under prison regulations, without more, does not state a claim of a Constitutional violation. Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986); Smith v. Luciani, 1998 U.S. Dist. LEXIS 4291, at \*14 (E.D. Pa. Mar. 31, 1998). Here, Plaintiff merely alleges that Hollis falsely accused him of misconduct. Without more, Plaintiff's due process claim must be dismissed for failure to state a Constitutional violation.

### **C. Retaliation Claim**

Plaintiff alleges that after he voiced his "objections" to Hollis during the cell search and attempted to kick his papers back into his cell, Hollis retaliated against him by assaulting him and charging him with misconduct. To state a prima facie retaliation claim under § 1983, a plaintiff must allege that: (1) the plaintiff had engaged in constitutionally protected conduct; (2) the plaintiff suffered some adverse action at the hands of

the prison officials; and (3) there was a causal link between the plaintiff's exercise of his constitutional rights and the adverse action taken against him. Rausser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001) (importing burden-shifting framework of Mount Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274 (1977) into the prison context). Once a prisoner demonstrates that his exercise of a constitutional right was a substantial or motivating factor in the challenged decision, the prison officials may still prevail by proving that they would have made the same decision absent the protected conduct for reasons reasonably related to a legitimate penological interest. Id. at 334 (incorporating standard articulated in Turner v. Safley, 482 U.S. 78 (1987) that courts should afford deference to decisions made by prison officials, since they possess necessary expertise).

Defendants argue that Plaintiff fails to make a prima facie case of First Amendment retaliation because his verbal objection was an admitted act of interfering with the cell search and, thus, cannot be deemed constitutionally protected activity. Prison officials may curtail First Amendment freedoms to preserve order, stability or security, but they may not retaliate against an inmate for engaging in communication which does not threaten prison order, the security of other inmates or staff or implicate other legitimate penological interests. Robinson v. Barone, No.

Civ. A. 92-1854, 1993 U.S. Dist. LEXIS 5045, at \* 13-14 (E.D. Pa. Apr. 16, 1993). Here, Plaintiff's Complaint alleges a prima facie claim for retaliation, the merits of which may be better addressed on a motion for summary judgment, where the burden-shifting analysis described above may be applied to the facts discovered by the parties. Accordingly, Plaintiff's First Amendment retaliation claim survives dismissal at this juncture.

#### **D. Conspiracy Claim**

Plaintiff alleges that Marsh and Hollis conspired to violate his civil rights, but fails to articulate a cognizable conspiracy claim under § 1983. In the Third Circuit, a conspiracy claim must be stated with specificity, and may not be based merely upon suspicion and speculation:

it is a longstanding rule in the Third Circuit that a mere general allegation . . . [or] averment of conspiracy or collusion without alleging the facts which constituted such conspiracy or collusion is a conclusion of law and is insufficient [to state a claim].

Young v. Kann, 926 F.2d 1396, 1405 n.16 (3d Cir. 1991) (citing Kalmanovitz v. G. Heileman Brewing Co., Inc., 595 F. Supp. 1385, 1400 (D. Del. 1984), aff'd, 769 F.2d 152 (3d Cir. 1985)). To state a claim for conspiracy under § 1983, a plaintiff must alleged "specific facts suggesting that there was a mutual understanding among the conspirators to take actions directed toward an unconstitutional end." Duvall v. Sharp, 905 F.2d 1188,

1189 (8th Cir. 1990). There must be "allegations of a combination, agreement or understanding among all or between any of the defendants," and "factual allegations that the defendants plotted, planned, or conspired together to carry out the chain of events." Safeguard Mutual Insur. Co. v. Miller, 477 F. Supp. 299, (E.D. Pa. 1979) (quoting Ammlung v. City of Chester, 494 F.2d 811, 814 (3d Cir. 1974)).

Here, Plaintiff states in conclusory fashion that Marsh and Hollis conspired against him, but fails to allege any facts to show that there existed an agreement or understanding between them, or that they otherwise planned together to carry out the chain of events leading to a violation of Plaintiff's constitutional rights. Rather, Plaintiff merely expresses his suspicion that there exists "an underlying prison culture of 'cover up,' of unjustifiable use of excessive force against inmates, by guards . . . ." (Compl. ¶ 35.) Without more specific allegations, Plaintiff's conspiracy claim is legally deficient and must be dismissed.

#### **E. Inadequate Investigation Claim**

Plaintiff alleges that Eason violated his constitutionally protected rights by conducting an inadequate or incomplete investigation of the alleged assault by Hollis upon Plaintiff. In order to state a civil rights claim under § 1983, "[a]

defendant . . . must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of respondeat superior." Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). The necessary involvement can be shown in two ways, either through allegations of personal direction or of actual knowledge and acquiescence, however, such allegations must be made with "appropriate particularity." Id.

Here, Plaintiff claims that Eason, after the alleged incident took place, failed to adequately investigate Plaintiff's grievances in finding that Plaintiff's allegations were unsubstantiated. (Compl. ¶ 28.) Plaintiff fails to allege any way in which Eason had knowledge of and/or acquiesced in the alleged discriminatory conduct. Since Plaintiff fails to sufficiently plead a civil rights action against Eason, his claim of inadequate or incomplete investigation must fail.

#### **F. Pendent State Law Claims**

In addition to his § 1983 claims, Plaintiff asserts a pendent state law intentional tort claim against Hollis for assault and battery, and a claim against all Defendants that they violated Plaintiff's rights under the Pennsylvania Constitution. Defendants argue that they cannot be sued in their official capacities because of sovereign immunity and, further, that Plaintiff's pendent state law claims do not fall within the nine

narrow negligence exceptions set forth in 42 Pa. Cons. Stat. § 8522(b),<sup>4</sup> or any other statute. It appears from the Complaint, however, that Plaintiff is suing Defendants in their individual capacities. (Compl. ¶ C.7.) To the extent that Plaintiff asserts pendent state law claims against Defendants in their individual capacities, at this procedural juncture, those claims will survive Defendants' Motion to Dismiss.<sup>5</sup>

#### IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is **GRANTED IN PART** and **DENIED IN PART** to the extent that the following claims are **DISMISSED WITHOUT PREJUDICE**: (1) First Amendment access to courts claim against Hollis; (2) Fourteenth Amendment due process claim against Hollis; (3) conspiracy claim against

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<sup>4</sup> In Pennsylvania, the nine categories of cases for which sovereign immunity has been waived are: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property; (4) Commonwealth real estate, highways and sidewalks; (5) potholes and other dangerous conditions; (6) care, custody or control of animals; (7) liquor store sales; (8) National Guard activities; and (9) toxoids and vaccines. 42 Pa. Cons. Stat. § 8522(b).

<sup>5</sup> To the extent that Plaintiff would seek recovery for damages against Defendants in their official capacities, those claims are barred by the Eleventh Amendment's grant of sovereign immunity. See e.g., Kentucky v. Graham, 473 U.S. 159 (1984); Koslow v. Pennsylvania, 302 F.3d 161 (3d Cir. 2002); Scantling v. Vaughn, No. Civ. A. 03-0067, 2004 U.S. Dist. LEXIS 1995 (E.D. Pa. Feb. 12, 2004).

Hollis and Marsh; and (4) inadequate investigation claim against Eason. All other claims remain before the Court.

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**O R D E R**

**AND NOW**, this day of April, 2004, in consideration of the Motion to Dismiss, in Part, Plaintiff's Complaint filed by Defendants N. Hollis, Kenneth Eason and Kevin Marsh (collectively, "Defendants") (Doc. No. 13) and the Response in Opposition filed by pro se Plaintiff Ronald Wesley ("Plaintiff") (Doc. No. 15), **IT IS ORDERED** that Defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART** to the extent that the following claims are **DISMISSED WITHOUT PREJUDICE**:

- (1) First Amendment access to courts claim against Hollis;
- (2) Fourteenth Amendment due process claim against Hollis;
- (3) conspiracy claim against Hollis and Marsh; and
- (4) inadequate investigation claim against Eason.

All other claims remain before the Court.

BY THE COURT:

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JAMES MCGIRR KELLY, J.