

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

JOSE SANTIAGO,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
VINCENT GUARINI, et al.	:	No. 03-4375
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

July 8, 2004

Plaintiff Jose Santiago, an inmate at Lancaster County prison, brings this action pro se pursuant to 42 U.S.C. § 1983 alleging that Prison Medical Director Robert Doe, among others, violated Plaintiff's Eighth Amendment right to adequate medical care while he was incarcerated. Presently before the Court is Defendant Doe's motion to dismiss the Complaint for failure to state a claim on which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.¹ For the reasons set out below, the Court grants Defendant's motion.

I. FACTUAL BACKGROUND

On July 2, 2003, Plaintiff slipped in his cell, injuring his hand and back. (Compl. ¶ 3.) He was taken to the prison medical department, where the nurse on duty called Defendant Doe and informed him that Plaintiff needed immediate treatment at an outside hospital. (*Id.* ¶ 7.) Dr. Doe refused this recommendation. (*Id.*) Instead, Plaintiff was given Motrin and his hand was x-rayed and placed in a half-cast. (*Id.* ¶¶ 8-10.)

¹ Plaintiff requests that the Court deny Defendant's motion as untimely. The Court declines to do so, however, because: (a) it is not clear when, if ever, Dr. Doe was properly served with process such that the time for filing a motion to dismiss began to run; and (b) Plaintiff suffered no prejudice during the delay before the motion was filed.

II. STANDARD OF REVIEW

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court may look only to the facts alleged in the complaint and its attachments. *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must accept as true all of the factual allegations pleaded in the complaint and draw all reasonable inferences in favor of the non-moving party. *Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). A motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint's allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

III. DISCUSSION

The relevant question in this case is whether Plaintiff has properly alleged a violation of his Eighth Amendment right to adequate medical care. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (holding that plaintiff's allegation that prison doctors should have performed certain diagnostic tests instead of tests actually performed did not state claim under § 1983). "In order to establish a violation of [a prisoner's] constitutional right to adequate medical care, evidence must show (i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." *Natale v. Camden County Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003). A serious medical need is one that "has been diagnosed by a physician as requiring treatment or . . . is so obvious that a lay person would easily recognize the necessity for a doctor's attention."

Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (collecting cases). In order to make out a case of deliberate indifference, the plaintiff is required to show that the defendant “kn[ew] of and disregard[ed] an excessive risk to inmate health or safety.” *Natale* 318 F.3d at 582 (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). Neither “an inadvertent failure to provide adequate medical care” nor “negligen[ce] in diagnosing or treating a medical condition” satisfy the deliberate indifference standard. *Estelle*, 429 U.S. at 105-06.

Plaintiff’s allegations do not state a cause of action under the Eighth Amendment. Plaintiff alleges only that Defendant Doe refused the recommendation of his nurse and instead provided Plaintiff with x-rays, Motrin, and a cast to treat his injured hand and back. Whether or not this treatment was adequate, the underlying injuries, even when viewed in Plaintiff’s favor, cannot be considered an objectively serious medical need or an excessive risk to Plaintiff’s safety. *See Despaigne v. Crolew*, 89 F. Supp. 2d 582, 585 (E.D. Pa. 2000) (granting summary judgment to defendants where inmate suffered “swelling and bruising” from altercation and was treated with pain medication); *Farley v. Doe*, 840 F. Supp. 356, 357 (E.D. Pa. 1993) (dismissing claim as frivolous where inmate injured back in basketball game and was treated with x-rays and pain medication). Indeed, cases from this Circuit and District in which Eighth Amendment claims have been sustained generally revolve around a prison’s failure to treat extremely severe, if not fatal, conditions. *See, e.g., Natale*, 318 F.3d at 582-83 (holding that standard was satisfied where prison withheld insulin from diabetic inmate); *Montgomery*, 294 F.3d at 500-01 (finding HIV-positive inmate’s allegation that prison staff failed to give him proper treatment not unmeritorious); *Durmer v. O’Carroll*, 991 F.2d 64, 68 (3d Cir. 1993) (reversing grant of summary judgment to defendant where inmate did not receive treatment after suffering stroke); *Devern v. Graterford State Corr. Inst.*, Civ. No. 03-6950,

2004 WL 1166574, at *2, 2004 U.S. Dist. LEXIS 9377, at *8-9 (E.D. Pa. May 24, 2004) (denying motion to dismiss where inmate died from sepsis after four days of “severe and excruciating abdominal pain, vomiting, and lack of bowel movements”); *Smith v. County of Bucks*, Civ. No. 03-6238, 2004 WL 868278, at *3, 2004 U.S. Dist. LEXIS 7199, at *9-10 (E.D. Pa. Apr. 19, 2004) (denying motion to dismiss where inmate died from highly visible cancerous tumor). Plaintiff’s allegation that he should have received additional treatment sounds in malpractice, but negligence does not give rise to a cause of action under § 1983. *Estelle*, 429 U.S. at 105-06. Accordingly, the Court grants Defendant’s motion to dismiss.

IV. CONCLUSION

For the foregoing reasons, Defendant Doe’s motion to dismiss is granted. An appropriate Order follows.

