

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

WILLIE L. YOUNG : CIVIL ACTION
: :
v. : :
: :
J.T. MEDDEN, et al. : NO. 03-5432

MEMORANDUM AND ORDER

McLaughlin, J.

January 7, 2005

The pro se plaintiff brings this civil rights action under 42 U.S.C. § 1983 against four prison officials, former Superintendent Donald T. Vaughn, Lieutenant J.T. Medden, Correctional Officer J.A. Wright, and Correctional Officer Chickcoviact. The plaintiff alleges that, while he was an inmate at the Pennsylvania State Correctional Institution at Graterford ("SCI-Graterford"), these defendants violated his right to be free of excessive use of force under the Eighth Amendment and his right to due process under the Fourteenth Amendment.

According to the complaint, on January 8, 2003, the plaintiff sat on the floor of the prison medical facility and refused to leave until he was administered medicine that had been prescribed by a doctor for asthma and congestion. Lt. Medden ordered a group of correctional officers to carry the plaintiff from the area.

The plaintiff alleges that, while the officers were carrying him, Officer Chickcoviact intentionally pinched his right side. The plaintiff yelled out that Officer Chickcoviact was pinching him and started to twist and turn in pain. The

plaintiff alleges that he then spit on Officer Chickcoviact because Lt. Medden failed to intervene. In response, Officer Chickcoviact and Officer Wright started to pull the plaintiff's hair. The officers put the plaintiff on the floor and pulled his legs toward his head. One officer placed his knee in the plaintiff's back. The plaintiff then noticed a lock of his hair on the floor.

Lt. Medden placed a "spit hood" on the plaintiff. Lt. Medden removed the hood after the plaintiff said he would not spit on the officers. The plaintiff was then escorted back to his cell by Lt. Medden, Officer Wright, and other unknown correctional officers. The plaintiff alleges that a "Nurse Jackie" told him the next morning that she saw two locks of his hair in the dispensary.

The plaintiff further alleges that, while he was in the shower the following morning, he showed his unit manager and another lieutenant the marks on his body where Officer Chickcoviact pinched him and the places on his head where Officers Chickcoviact and Wright pulled out his hair. These individuals, who are not parties to this action, refused the plaintiff's request to return to the medical department to be treated and photographed.

The plaintiff filed an inmate grievance against Lt. Medden, Officer Wright, and other unnamed correctional officers.

Lt. Medden was assigned to investigate the incident, and he found no wrongdoing. Superintendent Vaughn upheld Lt. Medden's decision, and the Chief Grievance Coordinator for the Department of Corrections denied the plaintiff's right to further appeal.

The defendants filed a motion to dismiss in which they raise three issues: (1) lack of personal involvement on the part of Superintendent Vaughn as required under § 1983; (2) failure to state a claim for excessive use of force under the Eighth Amendment because the alleged actions by the correctional officers were *de minimus*; and (3) failure to state a due process claim under the Fourteenth Amendment because there is no constitutional right to have prison officials investigate inmate grievances.

As to the claims against Superintendent Vaughn, the Court will grant the motion to dismiss by agreement of the plaintiff. During the status conference on January 6, 2005, the plaintiff informed the Court that he mistakenly listed Superintendent Vaughn's name on the complaint. The plaintiff stated that he deleted Vaughn's name from the top of the complaint but forgot to remove Vaughn's name from the list of defendants. All claims against former Superintendent Vaughn are therefore dismissed.

As to the claims against the remaining defendants, a motion to dismiss under Rule 12(b)(6) should not be granted

unless it appears that the plaintiff can prove no set of facts that would entitle him to relief. Smith v. Mensinger, 293 F.3d 641, 647 (3d Cir. 2002). In applying this standard, the Court must construe the pro se plaintiff's complaint liberally. Id.

First, the defendants contend that the plaintiff has failed to state a claim under the Eighth Amendment because, even accepting the plaintiff's allegations as true, the correctional officers' actions in forcibly removing the plaintiff from the medical area, pinching the plaintiff's side, and pulling the plaintiff's hair are not sufficiently severe to violate the constitution.

Although it is true that the Eighth Amendment does not protect an inmate against an objectively *de minimis* use of force, the Third Circuit has stated that the "pivotal inquiry" is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Smith, 293 F.3d at 648-49 (internal quotations and citations omitted). The Court of Appeals has identified five factors that courts should consider in determining whether a corrections officer has used excessive force: "(1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of the injury inflicted; (4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by responsible

officials on the basis of facts known to them; and (5) any efforts made to temper the severity of the forceful response." Id. at 649 (internal citations and quotations omitted).

The Court finds that it would be premature to dismiss the plaintiff's Eighth Amendment claim at this stage of the litigation. During the status conference on January 6, 2005, the plaintiff explained that he believes Officer Chickcoviact intentionally pinched his side in an attempt to provoke the plaintiff so that the officers could use additional force against him. The plaintiff also stated that the red marks caused by the alleged pinching remained on his body for at least one week.

Second, the defendants contend that the Court should dismiss the plaintiff's claims under the Fourteenth Amendment because the plaintiff does not have a constitutional right to require prison officials to investigate his grievance. The plaintiff stated during the status conference that his Fourteenth Amendment claim is based on the fact that Lt. Medden was put in charge of the investigation even though he was implicated in the alleged wrongful conduct.

Although the defendants raise serious issues concerning the plaintiff's due process claim, the Court will reserve judgment on the merits of the claim at this time.

An appropriate Order follows.

