

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

AARON C. WHEELER, et. al.,  
Plaintiffs

v.

JEFFREY BEARD, et. al.,  
Defendants

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CIVIL ACTION

NO. 03-4826

**Memorandum and Order**

YOHN, J.

August \_\_\_\_, 2005

*Pro se* plaintiffs Aaron Wheeler, Theodore Savage, James Pavlichko and Derrick Fontroy are prisoners currently incarcerated at State Correctional Institution Graterford (“SCIG”) in Pennsylvania. The relevant defendants for this purpose are Pennsylvania Department of Corrections (“DOC”) employees Arroyo, Beard, Burke, Canino, Clayton, Cook, Croll, DiGuglielmo, Feilds, Geist, Grassmeyer, Hatcher, Horn, Hosband, James, Jones, Klem, Knauer, Kovalchik, Kyler, Matello, Martin, Maue, McVey, Mooney, Moyer, Murray, O’Hara, Smith, Spencer, Stachelek, Ulisney, Unvarsky, Vaughn and Wolfe (collectively “DOC Defendants”), whose motion to dismiss was granted in part by order dated August 3, 2005.

Presently before the court is plaintiffs’ motion to alter or amend judgment or for reconsideration of the August 3, 2005 order under Federal Rules of Civil Procedure Rule 59(e) and 60(b), and the DOC defendants’ opposition thereto. For the reasons explained below, I will deny plaintiffs’ motion.

**I. Procedural History**

On August 8, 2003, plaintiffs filed their initial *pro se* complaint in this matter. The pleading was twice amended before being filed in its present form on September 8, 2004. In addition to federal antitrust claims and common law fraud and misrepresentation claims, plaintiffs' Second Amended Complaint raises a host of constitutional claims pursuant to 42 U.S.C. § 1983. More than 70 pages of the sprawling 120-page complaint are comprised of allegations that various prison officials, acting individually and in concert, retaliated against plaintiffs in response to plaintiffs' filing administrative grievances within the prison system and a federal lawsuit in May 2002 against defendants Vaughn, Hatcher, Beard and Ullisny. *See Fontroy v. Schweicker*, No. 02-2949 (E.D. Pa.). The remainder of the complaint challenges the constitutionality of plaintiffs' conditions of confinement and includes claims under § 1983 relating to the DOC's grievance and appeals process, its mail policy, its provision of medical services to inmates, its management of funds and its maintenance of facilities.

Several defendants in the case filed motions to dismiss prior to the submission of the Second Amended Complaint. These motions were renewed, and, in some cases modified or supplemented, following submission of the Second Amended Complaint.

In an August 3, 2005 Memorandum and Order, this court ruled upon the DOC Defendants' motions to dismiss the retaliation and constitutional claims, granting them in part and denying them in part. This court denied the motions to dismiss plaintiffs': 1) First Amendment retaliation claims, 2) First Amendment challenge to prison mail regulation DC-ADM 803, 3) Eighth Amendment claims relating to the general environmental conditions and excessive heat in the dining halls of SCIG and 4) Fourteenth Amendment due process claim relating to the alleged misappropriation of monies from the Inmate General Welfare Fund. This

court granted the motions to dismiss plaintiffs': 1) First Amendment access to courts claims, except Wheeler's claim relating to alleged delays in the mailing of legal materials, 2) Eighth Amendment claims relating to the provision of medical services, except Wheeler's claim relating to an alleged denial of surgery to remove a lump on his arm, 3) Eighth Amendment claim relating to the denial of an electric shaver to Wheeler, 4) Fourteenth Amendment procedural due process claims relating to the adequacy of prison grievance procedures to address alleged deprivations of plaintiffs' personal property, 5) claims against institutional defendants the DOC, SCIG, the SCIG Medical Department and the SCIG CERT Team and 6) claims against individual defendants Conrad, Hardnett and Rosso.

In response to the August 3, 2005 Memorandum and Order, plaintiffs filed a motion to alter or amend judgment or for reconsideration under Fed. R. Civ. P. 59(e) and 60(b). The DOC Defendants filed a response in opposition to plaintiffs' motion.

### **III. Discussion**

Plaintiffs assert that this court's August 3, 2005 Memorandum mistakenly characterized certain allegations of defendant misconduct as due process or access to courts claims instead of as retaliation claims, and then dismissed the claims based on the wrongful characterization. Plaintiffs specifically identify claims that prison officials: 1) destroyed Savage's watch and typewriter and seized his copy of a civil complaint, 2) seized Pavlichko's legal materials, 3) seized Fontroy's legal materials and 4) destroyed Wheeler's radio and television antenna. While this court did determine that those allegations were insufficient to support due process or access to courts claims, it also included the factual allegations in its retaliation discussion and denied the DOC Defendants' motion to dismiss the retaliation claims.

This court's August 3, 2005 memorandum summarizes plaintiffs' litany of retaliation allegations on page 6 ("summary"). The summary includes all four of the allegations that plaintiffs claim were misidentified.

Plaintiffs aver that this court failed to include Pavlichko's and Fontroy's allegations that prison officials seized their legal materials in its discussion of retaliation. However, the summary actually specifically includes those allegations.

Plaintiffs also contend that the court failed to include Savage's allegations that prison officials destroyed his watch and typewriter and seized his copy of a civil complaint and Wheeler's allegations that prison officials destroyed his radio and television antenna in its discussion of retaliation. However, the summary includes the allegations that prison officials "ransacked" both Savage's and Wheeler's cells. The summary's articulation is sufficiently broad to subsume the plaintiffs' more specific allegations.

Thus, plaintiffs' argument that this court mistakenly construed retaliation allegations as due process or access to courts claims overlooks the order's summary of retaliation claims. Thus, the original order has already provided the result that plaintiffs now request. Accordingly, their motion in this case will be denied.

An appropriate order follows.

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**Order**

And now, this \_\_\_\_\_ day of August 2005, upon careful consideration of plaintiffs' motion to alter or amend judgment or for reconsideration under Fed. R. Civ. P. 59(e) and 60(b) (Doc. No. 266), and defendants' opposition thereto, it is hereby ORDERED that the motion is DENIED.

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William H. Yohn, Jr., Judge