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

DONALD WATKINS,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	NO. 96-4129
MARTIN HORN, et al.,	:	
Defendants.	:	

MEMORANDUM

R.F. KELLY, J. JUNE 10, 1997

Plaintiff Donald Watkins, a state prisoner, filed a pro se complaint, pursuant to 42 U.S.C. § 1983, against numerous officials and employees, in their official and individual capacities, at the Department of Corrections and the State Correctional Institution at Graterford ("SCI Graterford") and seeks compensatory and punitive damages. Plaintiff alleges that he "has been discriminated against because he was not diagnostically re-classified according to Department of Corrections requirements, barring Plaintiff from significant institutional programs for parole consideration unlike other parole violators within Graterford's general population." (Complaint at IV(A)(4)(b).) Plaintiff further alleges that the staffing members who considered him for reparole used inaccurate information "by reviewing Plaintiff as a violent criminal absent convictions of high risk, dangerous crimes or statutory crimes of violence." (Complaint at IV(A)(4)(c).) Thus, Plaintiff's claims, in the case at hand, arise from allegations that he was not fairly considered for reparole.

Presently before this Court is Plaintiff's Motion to Alter or Amend this Court's Judgment, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Plaintiff has filed this motion because he contends that an error in law and fact needs to be corrected with regard to the dismissal of his First Amendment retaliation claim. For the following reasons, Plaintiff's Motion will be granted.

STANDARD

"The purpose of a motion to alter or amend a judgment under FED. R. CIV. P. 59(e) is to `correct manifest errors of law or fact or to present newly discovered evidence.'" Ruscavage v. Zuratt, 831 F. Supp. 417, 418 (E.D. Pa. 1993) (citation omitted). "Under Rule 59(e), a party must rely on one of three grounds: 1) the availability of new evidence not previously available, 2) an intervening change in controlling law, or 3) the need to correct a clear error of law or to prevent manifest injustice." Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994) (citing Reich v. Compton, 834 F. Supp. 753, 755 (E.D. Pa. 1993)); see also Cohen v. Austin, 869 F. Supp. 320, 321 (E.D. Pa. 1994). As stated above, Plaintiff contends that this Court erred in dismissing his First Amendment retaliation claim and, thus, brings this motion to alter or amend based upon the third ground.

BACKGROUND

On April 23, 1991, Plaintiff was sentenced to the State Correctional Institution at Graterford, Pennsylvania, for several drug related crimes. On February 11, 1994, Plaintiff was released

on parole subject to certain conditions, as set forth in 37 Pa. Code § 63.4. Then, on July 14, 1994, Plaintiff was arrested and later convicted on charges of terroristic threats and simple assault.

Subsequently, Plaintiff was returned to SCI Graterford as a convicted and technical parole violator. On February 24, 1995, the Pennsylvania Board of Probation and Parole ("the Board") recommitted Plaintiff to prison to serve his original sentence. Plaintiff appealed that order, and, on September 30, 1995, he received notice of the Board's decision to modify the recommitment portion of the Board action of 2-24-95 by removing reference to one technical violation ("condition 2"), "changing approved residence without written permission of parole supervision staff," and adding as an aggravating reason "assaultive offense while on parole." In addition, the Board temporarily suspended the reparoling portion of said action and listed it for review. On November 14, 1995, Plaintiff was staffed for reparole consideration. Subsequently, Watkins appealed to the Commonwealth Court of Pennsylvania, contending that the Board abused its discretion in adding the aggravating reason and in not reducing backtime due to the elimination of one of the violations for which it was imposed. On October 31, 1996, the court ordered that the Board's decision on administrative relief be vacated and remanded the case for the reversal of backtime imposed for a violation of condition 2.

Plaintiff then filed the instant lawsuit, alleging, inter alia, that he was not fairly considered for reparole. Included

among Plaintiff's claims are allegations that Defendants retaliated against Plaintiff for exercising his First Amendment Rights. Specifically, Plaintiff alleges that Defendants retaliated against Plaintiff by executing Plaintiff's parole review, even after being notified through numerous complaints that Plaintiff's constitutional rights were being violated, and reviewing him as a violent criminal knowing that Plaintiff has no violent crime convictions in order to punish him for exercising his appeal rights.

On May 13, 1997, this Court issued a Memorandum Opinion and Order that granted in part and denied in part a motion filed by Defendants to dismiss Plaintiff's Complaint. Defendants' Motion was denied with respect to Plaintiff's claims that Defendants violated his rights of Substantive Due Process and Equal Protection. Defendants' Motion to Dismiss was granted with respect to Plaintiff's claims concerning retaliation, the doctrine of Res Judicata, Double Jeopardy, the Ex Post Facto Clause and the Eighth Amendment. In addition, Plaintiff's Motion to Amend and Supplement Pleadings was granted only with respect to Plaintiff's surviving claims concerning substantive due process and equal protection.

DISCUSSION

This Court noted in its May 13, 1997 Memorandum that, despite the Third Circuit's requirement that § 1983 complaints articulate, with factual specificity, the conduct alleged to have caused harm to the plaintiff, allegations presented in a pro se complaint are held to less stringent standards than formal

pleadings drafted by lawyers. (Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996)). Furthermore, "a court must assume a pro se plaintiff's factual allegations are true and construe his claim liberally.'" Id. Despite the above, this Court granted Defendants' Motion to Dismiss Plaintiff's retaliation claim, relying on Jubilee v. Horn, 959 F. Supp. 276 (E.D. Pa. 1997).

In Jubilee, a pro se prisoner at SCI Graterford instituted what appears to be an identical § 1983 lawsuit. Initially, the court entered an order dismissing the action in its entirety with prejudice. The plaintiff then moved for reconsideration of the dismissal of its claims that Defendants' parole procedures violated his rights under the Fifth, Eighth and Fourteenth Amendments of the United States Constitution. The Jubilee court granted the plaintiff's reconsideration motion with respect to his due process and equal protection claims, but denied reconsideration of his retaliation claim. In doing so, Judge Joyner noted that the indefinite suspension of a reparole eligibility date in response to an exercise of constitutional rights may state a claim under § 1983, see id. at 283 n.9, but concluded the following with respect to the plaintiff's allegations:

> We agree with Defendants and find Plaintiff's allegations woefully inadequate, even considering his pro se status. . . . Plaintiff makes no allegations concerning if and what they knew about his parole process challenges, when they knew it, or how

> it affected any decisions they made. In short, Plaintiff alleges no facts that support his bare assertion that Defendants wrongfully retaliated against him for exercising his constitutional rights.

Id. at 283 (citing Adams v. Rice, 40 F.3d 72, 74 (4th Cir. 1994)).

Like in Jubilee, Defendants in the case sub judice have argued the following in support of their motion to dismiss Plaintiff's First Amendment retaliation claim:

> Plaintiff makes ambiguous, broad, conclusory and unsubstantiated assertions that do not identify how any of the defendants' actions retaliated against his right of access to the courts. He does not allege what they knew about his court appeals, when they knew it, or how it affected any decisions they made.

(Defendants' Memorandum in Support of Motion to Dismiss at 18.) Defendants restate those arguments in response to the instant motion. (Defendants' Opposition Memorandum to Plaintiff's Motion to Alter or Amend Judgment at 2.)

However, further examination of the allegations at issue requires this Court to grant Plaintiff's Motion to Alter or Amend and reinstate Plaintiff's First Amendment retaliation claim. As set for below, "pro se plaintiffs like [Watkins] are entitled to even greater deference when the sufficiency of their pleadings are called into question." Boone v. Chesney, No. CIV. A. 94-3293, 1994 WL 477670, at *1 (E.D. Pa. Sept. 2, 1994) (citations omitted); see also Campbell v. Lehman, No. CIV. A. 93-1584, 1994 WL 185017, at *1 (E.D. Pa. May 6, 1994) (denying defendants' motion to dismiss with

respect to pro se prisoner's First Amendment claims because the second amended complaint adequately asserted that he was retaliated against for asserting his own legal rights); Simpson v. Smith, Civ. A. No. 90-7089, 1991 WL 24795 (E.D. Pa. Feb. 21, 1991) ("Pro se civil rights complaints are held to a lesser standard than pleadings filed by lawyers.").

In Milhouse v. Carlson, 652 F.2d 371 (3d Cir. 1981), the Third Circuit Court of Appeals reversed the district court's dismissal of a pro se prisoner's complaint for failure to state a claim upon which relief can be granted. In that case, the plaintiff alleged that certain officials and employees of the United States Bureau of Prisons had conspired to deprive plaintiff of his rights and get him out of the capacity of leadership that he held among the Moslems at Lewisburg Penitentiary. On appeal, the Third Circuit held that the complaint stated a claim for relief on the theory that the prisoner had been subject to a conspiratorially planned series of disciplinary actions as retaliation for initiating a civil rights suit against prison officials, thereby infringing on prisoner's First Amendment right of access to the courts. In doing so, the court concluded that "a liberal construction of a pro se complaint `requires that the judge view all of [the] allegations not as isolated incidents, but rather as a unit.'" Id. at 374.

Here, Plaintiff contends that his retaliation claim "is rooted in . . . exercising his constitutional right to appeal to administrative forums, such as in this case to the Board . . . . "

(Plaintiff's Motion to Alter or Amend at 2) (citing Franco v. Kelly, 854 F.2d 584, 589 (3d Cir. 1988)). Furthermore, Plaintiff argues that the facts alleged (1) pinpoint Plaintiff's right to petition administrative forums as the First Amendment violation and (2) identify how the Defendants retaliated against Plaintiff for successfully appealing to the Board (by reviewing Plaintiff as a violent criminal knowing that Plaintiff has no violent crime convictions). Plaintiff adds that, in deciding whether to reinstate his retaliation claim, every favorable inference may be drawn from his allegations. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409-10 (3d Cir.), cert. denied, 501 U.S. 1222 (1991).

Liberally construing Plaintiff's pro se Complaint, as required by Third Circuit case law, this Court concludes that Plaintiff's Motion to Alter or Amend this Court's May 13, 1997 Judgment must be granted, as Plaintiff's allegations adequately allege that he was retaliated against for asserting his First Amendment rights. An appropriate order will follow.

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

DONALD WATKINS, Plaintiff, v. MARTIN HORN, et al., Defendants.	CIVIL ACTION NO. 96-4129

ORDER

AND NOW, this 10th day of June, 1997, upon consideration of Plaintiff's Motion to Alter or Amend this Court's May 13, 1997 Judgment, and Defendants' response thereto, it is hereby ORDERED that Plaintiff's Motion is GRANTED.

BY THE COURT:

Robert F. Kelly, J.