

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

HENRY E. CHASE : CIVIL ACTION
 :
 v. :
 :
 WACKENHUT CORRECTIONS :
 CORPORATION, et al. : NO. 97-3337

M E M O R A N D U M

WALDMAN, J.

June 13, 1997

Presently before the court is plaintiff's motion for leave to proceed in forma pauperis with this pro se 42 U.S.C. § 1983 action in which he asserts a variety of claims.

Plaintiff is an inmate at the Delaware County Prison. He alleges that he has received "frivolous" misconduct citations and was given disciplinary hearings "not run according to proper procedures." He alleges that his inability to shower, exercise or receive visitors while placed on 24 hour lock-down constitutes cruel and unusual punishment. He alleges that a prison counselor dissuaded a witness to the shooting for which plaintiff is incarcerated from testifying for him after he had "finally talked the witness into testifying." He alleges that defendants Andrews, Lyons, Riggins and Dooley reneged on an agreement he had "negotiated" with them that he would be released from the restrictive housing unit ("RHU") in exchange for his statement regarding an incident involving an alleged use of excessive force which he witnessed. He alleges that an emergency response team forcibly handcuffed and shackled him in his cell during a search

in which personal property and legal research for an upcoming criminal trial were destroyed.

Plaintiff is a prisoner. On at least twelve prior occasions since March 1995, while plaintiff was incarcerated at various correctional facilities, he brought actions in the District Court which were dismissed as frivolous. Therefore, plaintiff's request to proceed in forma pauperis with the foregoing claims will be denied as required by 28 U.S.C. § 1915(g). See also Green v. Nottingham, 90 F.3d 415, 420 (10th Cir. 1996).

Plaintiff also alleges that defendants Andrews, Lyons, Dooley and Lyden "arranged it so" that another inmate would "physically attack" him. Plaintiff alleges that the other inmate was "well known for attacking inmates and guards" and "was supposed to be segregated from other inmates." Plaintiff alleges that one of the guards attacked by this inmate had required hospitalization. Plaintiff alleges that nevertheless the assaulting inmate was released and given access to plaintiff while he was exercising with the apparent intent that he be assaulted. These allegations, which at this juncture must be accepted as true, are sufficient to show that at the time of this alleged incident plaintiff was placed in imminent danger of serious physical injury. See Gibbs v. Roman, 1997 WL 302399, *3 (3d Cir. June 6, 1997).

Accordingly, plaintiff's motion for leave to proceed in forma pauperis will be granted as to his assault/intentional failure to protect claim and will otherwise be denied.

incarcerated is directed to deduct \$5.46 from plaintiff's inmate trust fund account and forward that amount to be credited, to Civil Action No. 97-3337, to the "Clerk of the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, PA 19106."

3. The Warden or other appropriate official at Delaware County Prison or at any prison at which plaintiff may be incarcerated shall after the initial partial filing fee is collected and until the full filing fee is paid, deduct from plaintiff's account, each time that plaintiff's inmate trust fund account exceeds \$10, an amount no greater than 20 percent of the money credited to his account during the preceding month and forward that amount, to be credited to Civil Action No. 97-3337, to "Clerk of the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, PA 19106."

4. The complaint is to be filed, the summonses are to issue, service of the summonses and complaint is to be made upon Warden Raymond Andrews, Assistant Warden Lyons, Captain Dooley, and Lieutenant John Lyden by the U.S. Marshals Service in the event that waiver of service is not effected under Fed.R.Civ.P. 4(d)(2). The Clerk of Court shall also send a copy of the complaint to the attorney representing the correctional institution where the claim is alleged to have arisen. To effect waiver of service the Clerk of Court is specially appointed to serve written waiver requests on the defendants. The waiver of

service requests shall be accompanied by copies of the complaint and shall inform the defendants of the consequences of compliance and of failure to comply with the requests. The requests shall allow the defendants at least 30 days from the date they are sent (60 days if addressed outside any judicial district of the United States) to return the signed waivers. If a signed waiver is not returned within the time limit given, the Clerk of Court's office shall transmit the summons and a copy of the complaint to the U.S. Marshals Service for immediate service under Fed.R.Civ.P. 4(c)(1), and a copy of this Order is to be directed to all parties.

5. All original pleadings and other papers submitted for consideration to the Court in this case are to be filed with the Clerk of this Court. Copies of papers filed in this Court are to be served upon counsel for all other parties (or directly on any party acting pro se). Service may be by mail. Proof that service has been made is provided by a certificate of service. This certificate should be filed in the case along with the original papers and should show the day and manner of service. An example of a certificate of service by mail follows:

"I, (name) , do hereby certify that a true and correct copy of the foregoing (name of pleading or other paper) has been served upon (name(s) of person(s) served) by placing the same in the U.S. Mail, properly addressed, this (date) day of (month) , (year).

(Signature)"

If any pleading or other paper submitted for filing does not include a certificate of service upon the opposing party or counsel for opposing party, it may be disregarded by the Court.

6. Any request for court action shall be set forth in a motion, properly filed and served. The parties shall file all motions, including proof of service upon opposing parties, with the Clerk of Court. The Federal Rules of Civil Procedure and local rules are to be followed. Plaintiff is specifically directed to comply with Local Civil Rule 7.1 and serve and file a proper response to all motions within fourteen (14) days. Failure to do so may result in dismissal of this action.

7. Plaintiff is **not** required to comply with Section 4:01 of the Civil Justice Expense and Delay Reduction Plan for the United States District Court for the Eastern District of Pennsylvania (the "Plan"), unless directed by further Order of the Court.

8. Plaintiff is specifically directed to comply with Local Rule 26.1(f) which provides that "[n]o motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute." Plaintiff shall attempt to resolve any discovery disputes by contacting defendant's counsel directly by telephone or through correspondence.

9. No direct communication is to take place with the District Judge or United States Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

10. In the event the summons is returned unexecuted, it is plaintiff's responsibility to ask the Clerk of the Court to issue an alias summons and to provide the Clerk with the defendant's correct address, so service can be made.

11. The parties should notify the Clerk's Office when there is an address change. Failure to do so could result in court orders or other information not being timely delivered, which could affect the parties' legal rights.

12. The Clerk is directed to send a copy of this order to the Warden of Delaware County Prison.

BY THE COURT:

JAY C. WALDMAN, J.