

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

JOSÉ ENRIQUE NIEVES : CIVIL ACTION
 :
 v. : NO. 96-6525
 :
 MARTIN L. DRAGOVICH, *et al.* :

MEMORANDUM

YOHN, J. November , 1997

Plaintiff José Nieves has filed a *pro se* complaint against prison officials, alleging various civil rights and state law claims arising out of his treatment during his incarceration at SCI Mahanoy. Defendants have moved for summary judgment. The motion will be denied as to plaintiff's equal protection claim against defendant Thomas based on allegations of unequal treatment during visits to the prison by plaintiff's wife, and as to plaintiff's equal protection claim against defendant Canino based on allegations of racial disparity in her sanctioning at prison misconduct hearings. Summary judgment will be granted to defendants on all of plaintiff's other claims.

STANDARD OF REVIEW

Under Fed.R.Civ.P. 56(c), summary judgment is to be granted upon motion of any party "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where, as here, the nonmovant bears the burden of persuasion at trial, the moving party may meet its burden with a showing

“that there is an absence of evidence to support the nonmoving party's case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

In evaluating a motion for summary judgment, “the evidence of the nonmovant is to be believed,” and the court must draw all reasonable inferences in the nonmovant’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Furthermore, where an inmate is litigating a civil rights action without benefit of counsel, the court will hold such a plaintiff to a less stringent standard than a trained lawyer, and will liberally construe the allegations of the *pro se* complaint. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Gibbs v. Roman*, 116 F.3d 83, 86 n.6 (3d Cir. 1997). The plaintiff nonetheless “must present affirmative evidence to defeat a properly supported motion for summary judgment,” *Anderson*, 477 U.S. at 257, and must do more than rest upon mere allegations, general denials, or vague statements. *Trap Rock Indus., Inc. v. Local 825*, 982 F.2d 884 (3d Cir. 1992). “[T]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient.” *Anderson*, 477 U.S. at 252. Rather, “where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

BACKGROUND¹

José Enrique Nieves is imprisoned in the State Correctional Institution at Mahanoy,

1. For purposes of summary judgment, plaintiff cannot rely on mere allegations set forth in his complaint. However, the plaintiff’s relevant allegations, supported and unsupported, are restated here to outline the factual matters at issue in the complaint. As required in determining a motion for summary judgment by the defendants, all evidence will be viewed in the light most favorable to the plaintiff.

Pennsylvania (“SCI Mahanoy”). For ten years prior to his transfer to SCI Mahanoy, Nieves’s prison record was free of misconduct. Defs.’ Mot. Summ. J. Ex. 1 (“Nieves Dep.”) at 33.

This action arises out of the actions of Officer J. Thomas toward plaintiff and plaintiff’s wife during Thomas’s assignment to the prison’s visiting room. Nieves Dep. at 6-7. Every time Thomas was present during a visit by Mrs. Nieves, Thomas repeatedly “reprimanded them both for sitting too close to each other.” Pl.’s Compl. at ¶¶ 10-11. Other prisoners were not stopped from touching and kissing their visiting family members, but Thomas singled out Mr. and Mrs. Nieves for selective enforcement of the rules, and constant harassment. *Id.*; Nieves Dep. at 17. On November 12, 1994, Thomas reprimanded Nieves during and after Mrs. Nieves’s visit. Pl.’s Compl. at ¶¶ 20-22. As a result, Nieves commented to a second officer that Thomas “is trying to make [Nieves] feel like an asshole” by “fucking with his visits.” *Id.* at ¶ 39(g). Later that day, a misconduct report was filed by the second officer, falsely accusing Nieves of threatening bodily harm to Thomas. *Id.* at ¶¶ 30-34. A hearing on the misconduct took place before a hearing examiner, defendant Mary Canino, on November 15, 1994. Pl.’s Decl. Opp. Summ J. Ex. I. Canino found the officer’s written report more credible than the sworn testimony offered by Nieves and his witnesses, found Nieves guilty of the misconduct, and sanctioned him to ninety days in the restricted housing unit. Pl.’s Compl. at ¶¶ 41-42; Defs.’ Mot. Summ. J. Ex. 2.B. As a result of the misconduct appearing on his record, Nieves claims that he cannot obtain the favorable recommendation from SCI Mahanoy that he would need to support an argument for privileges such as parole, pre-release, or commutation of his sentence. Pl.’s Br. Opp. Summ. J. at 11.

An appeal to the program review committee was filed and denied, and that denial was

appealed to defendant Dragovich, superintendent of SCI Mahanoy, who denied it. Pl.'s Compl. at ¶¶ 43-46. After exhausting administrative review, plaintiff submitted a complaint to this court. In my memorandum and order of November 18, 1996, plaintiff was given leave to proceed *in forma pauperis* with his complaint against defendants Thomas, Canino, and Dragovich, "based on plaintiff's allegations that he and his wife were repeatedly harassed in the prison visitation room, and that he was discriminated against and assigned an excessive period of disciplinary confinement because he is [H]ispanic." On April 22, 1997, plaintiff was permitted to amend his complaint to add a claim that defendants' policies and procedures, as applied against plaintiff, denied him a fair and impartial hearing due to intentional racial discrimination.

Liberally construing plaintiff's *pro se* complaint, the surviving causes of action are as follows: (1) claims under 42 U.S.C. § 1983 against Thomas and Dragovich for violations of due process and equal protection based on Thomas's harassment of plaintiff during visitation, (2) claims under § 1983 against Canino and Dragovich for violations of due process based on Canino's determinations of credibility in plaintiff's misconduct hearing, (3) claims under § 1983 against Canino and Dragovich for violations of equal protection based on alleged racial disparity in sanctioning, (4) claims under § 1985(3) against Canino and Dragovich for conspiracy to deprive plaintiff of civil rights at his misconduct hearing, (5) claims under the Sixth Amendment and Pa. Const. art. 1, § 10, against Canino based on the conduct and outcome of the misconduct hearing, and (6) claims under the Eighth Amendment against all defendants alleging that their conduct in the above matters amounts to cruel and unusual punishment.

DISCUSSION

1. Claims Against Thomas

The gravamen of plaintiff's complaint against Officer Thomas is that Thomas deprived the plaintiff of a constitutionally protected interest in connection with repeated harassment during plaintiff's visits with his wife. Plaintiff alleges "undue denials of liberty by the defendants without due process and equal protection of the laws." Pl.'s Compl. at ¶ 49.

A. Due Process

To state a claim under § 1983 for a due process violation, a plaintiff must satisfy the threshold requirement of showing that the interest of which he was deprived was constitutionally protected. Due process protection for a prisoner's state-created liberty interest is limited to "situations where deprivation of that interest 'imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.'" *Griffin v. Vaughn*, 112 F.3d 703, 706 (3d Cir. 1997) (quoting *Sandin v. Conner*, 515 U.S. 472, 484, 115 S.Ct. 2293, 2300 (1995)).

Plaintiff has presented evidence of numerous grievances filed against Thomas in addition to his own. I accept as true for this purpose the inference suggested by plaintiff, that Officer Thomas has engaged in a pattern of behavior of harassing inmates, with "habit, hostility, and intent to harm prisoners." Pl.'s Br. Opp. Summ. J. at 7. There is no doubt that such a pattern of behavior would be reprehensible. Nevertheless, Thomas's behavior toward Nieves does not rise to the level of misconduct necessary for this plaintiff to state a deprivation of due process rights under § 1983. See *Wilson v. Horn*, 971 F.Supp. 943, 948 (E.D. Pa. 1997); *Murray v. Woodburn*, 809 F.Supp. 383, 384 (E.D. Pa. 1993) (citing cases illustrating legal insufficiency of claims for "mean harassment" of inmates).

The harassment that Thomas directed toward plaintiff and Mrs. Nieves did not involve the use of physical force, and plaintiff has not alleged that he suffered any physical injury from any incident with Thomas.² Although verbal abuse and harassment by a prison official are far from laudable, it is well-settled that mere words do not give rise to a prisoner's cause of action under § 1983. *See Freeman v. Arpaio*, 1997 WL 556066, at *5 (9th Cir. Sept. 9, 1997); *Robertson v. Plano City*, 70 F.3d 21, 24-25 (5th Cir. 1995); *Pittsley v. Warish*, 927 F.2d 3, 7-8 (1st Cir. 1991); *Maclean v. Secor*, 876 F.Supp. 695, 698-99 (E.D. Pa. 1995). Because plaintiff has not presented evidence that he has been deprived of a liberty interest that is constitutionally protected under due process, I will grant summary judgment to defendant Thomas on the due process claim against him.

2. Thomas put his hands on plaintiff at least once, tapping or pushing plaintiff's arm to indicate that he was not allowed to touch his wife. Nieves Dep. at 20. Plaintiff has not asserted or implied that the contact was of any significance. Based on plaintiff's description of the incident, *id.*, I find this to be no more than a *de minimis* use of force that cannot give rise to a federal claim. *See Hudson v. McMillian*, 503 U.S. 1, 9, 112 S.Ct. 995, 1000 (1992) (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (1973)). To the extent that plaintiff asserts claims for damages for mental or emotional injury he sustained because of Thomas's behavior, he is precluded from recovery, absent an allegation of physical injury. 42 U.S.C. § 1997e(e); *see Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997).

B. Equal Protection

Defendants' motion for summary judgment did not address plaintiff's claim that Officer Thomas violated his right to equal protection.³ Therefore, plaintiff may proceed against Thomas on that theory.

2. Claims Against Canino

A. Due Process

Plaintiff's interest in a fair and impartial determination of credibility and guilt during his misconduct hearing raises an issue of procedural due process. Plaintiff alleges he was deprived of two relevant liberty interests: (1) his opportunity to obtain privileges such as parole, pre-release, or commutation of his sentence, because those depend upon a favorable recommendation from SCI Mahanoy; and (2) his liberty interest in remaining in the general prison population, rather than disciplinary custody. However, as a threshold requirement to state a due process claim, the prisoner must have been deprived of an interest that is protected by the guarantee of due process under the U.S. Constitution.

3. Plaintiff does not allege that Thomas's actions were related to plaintiff's membership in any protected class, but rather that Thomas constantly "has singled out the plaintiff and the plaintiff's wife" as individuals, Pl.'s Compl. at ¶ 11, in a visiting room filled with inmates and visitors of all races. Nieves Dep. at 21. Every time Thomas was present for a visit by Mrs. Nieves, *id.* at 6-7, Thomas separated only the two of them, and no other couple. *Id.* at 16-17, 20. Plaintiff has offered evidence which, if believed, is sufficient to allow a rational trier of fact to find that he was treated differently from similarly situated prisoners in the visiting room, and that the discrimination was intentional and purposeful, with the aim of inducing plaintiff to tarnish his ten-year record of good conduct. Nevertheless, even assuming that plaintiff establishes those necessary predicates, Thomas need only show that his "reasons for treating an individual differently bear some rational relationship to a legitimate state purpose." *Brandon v. District of Columbia Bd. of Parole*, 823 F.2d 644, 650 (D.C. Cir. 1987). The record discloses no such reason offered by defendant Thomas.

First, as I have previously ruled in this case, plaintiff's interest in commutation or pardon is not protected. "Assuming without deciding that the plaintiff has been denied the opportunity to seek commutation because of the misconduct, he cannot state a due process claim in this case because 'an inmate has no constitutional or inherent right to commutation of his sentence.'" Order of Apr. 22, 1997 at n.1 (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981)) (internal quotation omitted). This applies equally to the denial of privileges of the same general nature as commutation, such as pardon, parole, program adjustments, and pre-release. Although a prisoner is entitled to protection from certain restraints "exceeding the sentence in . . . an unexpected manner," *Sandin v. Conner*, 515 U.S. 472, 484, 115 S.Ct. 2293, 2300 (1995), denial of the aforementioned privileges cannot lead to a punishment unexpectedly exceeding the original sentence.

Second, plaintiff's interest in remaining in the general prison population, and in the concomitant privileges that are denied to him in the restricted housing unit, are not protected by due process. *Sheehan v. Beyer*, 51 F.3d 1170, 1175 (3d Cir. 1995). In relation to the conditions of ordinary prison life, the Court has held that "discipline in segregated confinement d[oes] not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest." *Sandin*, 515 U.S. at 484, 115 S.Ct. at 2301; see *Griffin*, 112 F.3d at 706-08 (holding that confinement in RHU for up to 15 months without any pre-transfer hearing implicated no protected due process interest).

Therefore, no protected liberty interest was at stake in the misconduct hearing. Even assuming that such an interest existed, I find that plaintiff received all the process that was due to him. Plaintiff has placed into the record documents showing that he received advance

written notice of the charges against him, an opportunity to be heard and to present witnesses in his defense, and a written statement by the factfinder of the evidence relied upon in determining the disciplinary action. Pl.'s Decl. Opp. Summ. J. Ex. I; *see Superintendent, Mass. Correctional Inst. v. Hill*, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774 (1985). The officer's report, if credited, is sufficiently specific and adequate to support the charge. Pl.'s Decl. Opp. Summ. J. Ex. I; *cf. Dyson v. Kocik*, 689 F.2d 466, 467-68 (3d Cir. 1982). I conclude that Canino acted within the scope of her quasi-judicial function in determining that an officer's written report was more credible evidence than the sworn testimony of plaintiff and plaintiff's witness. It is the hearing examiner's province, and not this court's, to gauge the credibility of evidence and witnesses at a misconduct hearing.⁴ *White v. Kane*, 860 F.Supp. 1075, 1079 (E.D. Pa. 1994) (citing *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774); *see McElveen v. Canino*, No. 95-7221, 1995 WL 684063 (E.D. Pa. Nov. 17, 1995). Accordingly, summary judgment will be granted to defendant Canino on the claim that she violated plaintiff's constitutional right to due process.

B. Equal Protection

The essence of the equal protection guarantee embodied in the Fifth and Fourteenth Amendments is "that all persons similarly situated should be treated alike." *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985).

4. Plaintiff's arguments that Canino's use of a "boilerplate" statement in reporting her determinations of credibility is constitutionally impermissible, and that the phrase "preponderance of the evidence" is unconstitutionally void and vague, are without legal merit.

Plaintiff was sanctioned to ninety days in disciplinary custody.⁵ Pl.'s Compl. at ¶ 42. A mere discrepancy in the sanctions imposed upon two similarly situated individuals does not violate the equal protection clause. *Dorszynski v. United States*, 418 U.S. 424, 94 S.Ct. 3042, 41 L.Ed.2d 855 (1974); *United States v. Palma*, 760 F.2d 475 (3d Cir. 1985). However, plaintiff's claim is distinguishable from a claim that a similarly situated inmate has received a less severe sanction; he is arguing not that his sanction was more severe than that of another particular inmate, but rather that the manner in which his sanction was determined impermissibly distinguishes between prisoners based upon their race. *See Lorenzo v. Edmiston*, 705 F.Supp. 209, 212 (D.N.J. 1989).

There is evidence on the record comprised of voluminous raw data showing sanctions handed down at hearings conducted by Canino, and the races of the prisoners involved. Defs.' Mot. Protective Order Ex. B. Neither party has provided an analysis of this or any other data which would support a finding of whether or not the sanctions imposed by Canino for similar misconducts differ significantly based upon the prisoner's race. Plaintiff has produced no evidence, other than his allegation based upon the disparity that the statistics may show, that could prove that Canino purposefully or intentionally took race into consideration at any time.⁶

5. Ninety days in disciplinary custody status is the maximum sanction within the presumptive range for the misconduct of which plaintiff was found guilty. DC-ADM 801 §§ VI.A.1.n, VI.C.2.a, VI.C.5, Pl.'s Compl. Ex. B, at 54-56. The sanction was reduced to 60 days upon plaintiff's appeal to the program review committee. Defs.' Mot. Summ. J. Ex. 2. Plaintiff was actually released from disciplinary custody after 42 days. Nieves Dep. at 23-24.

6. Canino contests plaintiff's allegation as to consideration of "an inmate's national origin," and offers the directives containing the policies and procedures with which she claims to comply. Defs.' Mot. Summ. J. Ex. 2-3.

An equal protection analysis “begins with the basic principle that a [litigant] who alleges an equal protection violation has the burden of proving the existence of purposeful discrimination.” *McCleskey v. Kemp*, 481 U.S. 279, 292, 107 S.Ct. 1756, 1767 (1987). In *McCleskey*, an African-American prisoner who had been convicted of murdering a white victim used a statistical study to assert that Georgia’s capital punishment statute violated equal protection because race appeared to be a statistically significant factor in the decisions of prosecutors and jurors. *Id.* at 291-92, 107 S.Ct. at 1766-67. Like the unsuccessful petitioner in *McCleskey*, plaintiff Nieves “offers no evidence specific to his own case that would support an inference that racial considerations played a part in his sentence,” but relies solely on statistical evidence. *Id.* at 292-93, 107 S.Ct. 1767. In the absence of evidence specific to the case, statistics have been accepted as proof of intent to discriminate in some limited contexts:

First, this Court has accepted statistical disparities as proof of an equal protection violation in the selection of the jury venire in a particular district. Although statistical proof normally must present a “stark” pattern to be accepted as the sole proof of discriminatory intent under the Constitution, “[b]ecause of the nature of the jury-selection task, . . . we have permitted a finding of constitutional violation even when the statistical pattern does not approach [such] extremes.” Second, this Court has accepted statistics in the form of multiple-regression analysis to prove statutory violations under Title VII of the Civil Rights Act of 1964.

Id. at 293-94, 107 S.Ct. at 1767-68 (citations and footnote omitted) (alterations in original).

The Court noted that an “important difference between the cases in which we have accepted statistics as proof of discriminatory intent and this case is that, in the venire-selection and Title VII contexts, the decisionmaker has an opportunity to explain the statistical disparity.” *Id.* at 296, 107 S.Ct. at 1769. For that reason, the instant case is readily distinguishable from *McCleskey*, which challenged a pattern of decisionmaking by numerous

prosecutors and jurors over a period of many years. In the event that the statistical evidence offered by plaintiff demonstrates a stark racial disparity in Canino's sanctioning that appears to prove discriminatory intent,⁷ the decisionmaker will be afforded the chance to explain her sanctioning decisions.

The interpretation of statistical evidence offered to prove a violation of equal protection presents analytical difficulties to the court, to the defense, and *a fortiori* to the *pro se* litigant. *See Craig v. Boren*, 429 U.S. 190, 204, 97 S.Ct. 451, 460 (1976) ("It is unrealistic to expect either members of the judiciary or state officials to be well versed in the rigors of experimental or statistical technique.") Defendants, however, have failed to offer any analysis at all showing that they are entitled to summary judgment on the basis of the data in evidence. In the absence of even a cursory summation of the data that plaintiff has adduced, I will not deny plaintiff the opportunity to present an analysis that would persuade the court that a rational fact-finder could

7. In order to meet this standard, plaintiff will be required to show a "statistical pattern of discriminatory impact demonstrat[ing] a constitutional violation." *McCleskey*, 481 U.S. at 293 n.12, 107 S.Ct. 1756, 1767 n.12. This may be done either through multiple-regression studies, *see Bazemore v. Friday*, 478 U.S. 385, 400-01, 106 S.Ct. 3000, 3008-09 (1986) (Brennan, J., concurring), or by showing a pattern of racial discrimination comparable to those demonstrated in *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125 (1960), and *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064 (1886):

In those cases, the Court found the statistical disparities "to warrant and require," *Yick Wo v. Hopkins*, *supra*, 118 U.S., at 373, 6 S.Ct., at 1072, a "conclusion [that was] irresistible, tantamount for all practical purposes to a mathematical demonstration," *Gomillion v. Lightfoot*, *supra*, 364 U.S., at 341, 81 S.Ct., at 127, that the State acted with a discriminatory purpose.

McCleskey, 481 U.S. at 293 n.12, 107 S.Ct. 1756, 1767 n.12 (alteration in original). Plaintiff's only evidence on the issue of purpose or intent is his statistical evidence of discriminatory impact, and "[a]bsent a pattern as stark as that in *Gomillion* or *Yick Wo*, impact alone is not determinative." *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266, 97 S.Ct. 555, 564 (1977).

find in plaintiff's favor.

I therefore find that genuine issues of material fact remain as to whether racially disparate sanctioning occurred, whether such sanctioning reflected intentional or purposeful discrimination, and if so, whether such actions were nonetheless necessary to further the state's compelling interest in prison security. *See Quinn v. Cunningham*, 879 F.Supp. 25, 27 (E.D. Pa. 1995). I hold that defendants are not entitled to summary judgment on the claim that defendant Canino violated plaintiff's constitutional right to equal protection.

3. Claims Against Dragovich

Assuming without deciding that Thomas and Canino each deprived plaintiff of a constitutionally protected interest, I find that summary judgment in favor of Dragovich is appropriate for the following reasons:

As plaintiff acknowledges, the doctrine of respondeat superior may not be applied to find a supervisor liable under 42 U.S.C. § 1983 "for the conduct of a subordinate which violates a citizen's constitutional rights." *Blanche Road Corp. v. Bensalem Township*, 57 F.3d 253, 263 (3d Cir. 1995). This court has recently enunciated the requirements for finding such a supervisor personally liable:

[T]he plaintiff is required to show some affirmative conduct by Dragovich which played a role in the violation. Such personal conduct may be shown by demonstrating that Dragovich "participated in violating [plaintiff's] rights, or that he directed others to violate them, or that he, as the person in charge . . . had knowledge of and acquiesced in his subordinates' violations."

Moon v. Dragovich, No. 96-5525, 1997 WL 180333, at *2 (E.D. Pa. Apr. 16, 1997) (citations

omitted) (quoting *Baker v. Monroe Township*, 50 F.3d 1186, 1190-91 (3d Cir. 1995)).⁸ This court further held that “a supervisor may not be held liable for the conduct of his subordinates unless the plaintiff can demonstrate a causal connection between the supervisor's actions and the plaintiff's deprivation.” *Id.*; see *Shaw v. Strackhouse*, 920 F.2d 1135, 1147 (3d Cir. 1990); *Sample v. Diecks*, 885 F.2d 1099, 1118 (3d Cir. 1989); *Litz v. City of Allentown*, 896 F.Supp. 1401, 1413 (E.D. Pa. 1995).

In attempting to show that Dragovich is causally connected with the conduct of Thomas and Canino, plaintiff has alleged that Dragovich is liable: (1) for failing to correct, redress, or remedy plaintiff's grievance, (2) “for failing to properly train and supervise his subordinates,” and (3) because he “is the policy writer of the practices and procedures that govern his subordinates' actions and behavior.” Nieves Dep. at 28.

A. Liability for Denial of Appeal

Dragovich's denial of plaintiff's appeal does not provide any basis for liability. The denial of an appeal in a grievance procedure does not implicate any federal constitutional rights, because “the Constitution creates no entitlement to grievance procedures or access to any such procedure voluntarily established by a state.” *Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994) (citing *Flick v. Alba*, 932 F.2d 728, 729 (8th Cir. 1991)); *Wilson*, 971 F.Supp. at 947; *McGuire v. Forr*, No. 94-6884, 1996 WL 131130, at *1 (E.D. Pa. Mar. 21, 1996), *aff'd*, 101 F.3d 691 (3d Cir. 1996). Although prisoners do possess a constitutional right to seek redress of their grievances from the government, that right lies in the prisoner's right of access to the courts.

8. The identity of the defendant in *Moon v. Dragovich* is of no consequence to my analysis in the present case.

Wilson, 971 F.Supp. at 947. Even assuming that plaintiff was entitled to an administrative appeal, the record shows that Dragovich considered plaintiff's grievance and denied the appeal. Pl.'s Decl. Opp. Summ. J. Ex. O. No constitutional right is infringed by the fact that Dragovich's decision did not have the outcome that plaintiff desired.

B. Liability for Failure to Train and Supervise

Although failure to train and supervise is more typically raised in the context of municipal liability under § 1983, courts have held that “a supervisor may be held individually liable under § 1983 if . . . a failure to properly supervise and train the offending employee caused a deprivation of constitutional rights.” *Andrews v. Fowler*, 98 F.3d 1069, 1078 (8th Cir. 1996). The Third Circuit has held that the § 1983 plaintiff “must identify a failure to provide specific training that has a causal nexus with his or her injury and must demonstrate that the failure to provide that specific training can reasonably be said to reflect deliberate indifference.” *Colburn v. Upper Darby Township*, 946 F.2d 1017, 1030 (3d Cir. 1991).

Plaintiff has made no specific representations regarding the training or supervision actually received by either Thomas or Canino, beyond the conclusory allegation that Dragovich has failed to train or supervise them properly because they “continue to engage in the violations of inmate's constitutional rights.” Pl.'s Decl. Opp. Summ. J. at ¶¶ 10, 16. Plaintiff has identified no specific deficiencies in their training. Even assuming that the training was in some manner deficient, “the identified deficiency . . . must be closely related to the ultimate injury” such that the deficiency actually caused the offending conduct. *City of Canton v. Harris*, 489 U.S. 378, 391, 109 S.Ct. 1197, 1206 (1989). Plaintiff has offered no evidence from which a rational factfinder could infer the causal link between deficient training and the injury suffered.

Plaintiff has also failed to establish that Dragovich was deliberately indifferent. To establish deliberate indifference by a supervisor “requires a showing that the supervisor had notice that the training procedures and supervision were inadequate and likely to result in a constitutional violation.” *Andrews*, 98 F.3d at 1078 (citations omitted). As noted above, plaintiff has neither offered evidence of the nature of training procedures or supervision, nor identified a specific inadequacy. Plaintiff’s evidence shows only that Dragovich considered and responded to the complaints that reached him, and perceived in them no constitutional violation. In the absence of clear case law indicating that these inmates’ complaints were evidence of constitutional violations, plaintiff cannot show that Dragovich was deliberately indifferent to constitutional violations by his subordinates. *See Belcher v. City of Foley*, 30 F.3d 1390, 1395-96 (11th Cir. 1994).

C. Liability as Policymaker

Plaintiff has offered no evidence, beyond bare allegations, that Dragovich created or wrote the policies governing the manner in which Canino conducted disciplinary hearings, or the manner in which Thomas treated plaintiff during visitations. To the contrary, plaintiff has filed copies of the relevant administrative policies and procedures, which are on their faces authorized and signed by Commissioner Joseph Lehman. Pl.’s Compl. Ex. A, B.

In conclusion, I do not find evidence in the record that would suffice to support a finding by a rational trier of fact that Dragovich participated in, directed, had knowledge of, or acquiesced in wrongfully depriving plaintiff of a constitutionally protected interest. Therefore, no basis exists to find direct personal liability on the part of Dragovich, and I will grant summary judgment to Dragovich on all claims.

4. Other Claims and Causes of Action in Plaintiff's Complaint

Under provisions of the Prison Litigation Reform Act codified at 28 U.S.C. §§ 1915A, 1915(e) and 42 U.S.C. § 1997e(c), the district courts are required, either on the motion of a party or *sua sponte*, to dismiss any claims made by an inmate that are frivolous or fail to state a claim upon which relief could be granted. *See McGore v. Wrigglesworth*, 114 F.3d 601, 608 (6th Cir. 1997); *Tucker v. Angelone*, 954 F.Supp. 134, 135 (E.D. Va. 1997). Accordingly, I will dismiss plaintiff's claims under the civil rights conspiracy statute⁹ and

9. Claims under 42 U.S.C. § 1985(3) must be pleaded with factual specificity. *Rogers v. Mount Union Borough*, 816 F.Supp. 308, 314 (M.D. Pa. 1993). A mere conclusory allegation charging a racially motivated conspiracy is insufficient to avoid summary judgment; rather, plaintiff must assert facts from which a conspiratorial agreement can be inferred. *D.R. by L.R. v. Middle Bucks Area Vocational Tech. School*, 972 F.2d 1364, 1377 (3d Cir. 1992) (en banc); *Carter v. Cuyler*, 415 F.Supp. 852, 855 (E.D. Pa. 1976). Plaintiff has offered no evidence to support his allegation of a conspiracy to deprive him of civil rights.

under the Eighth Amendment¹⁰ for failure to state a claim upon which relief may be granted. I will dismiss plaintiff's claims relying upon nonexistent or inapposite provisions of the Sixth Amendment and the Pennsylvania Constitution as legally frivolous.¹¹

CONCLUSION

All of plaintiff's claims having been fully considered by this court, plaintiff may proceed with his two surviving equal protection claims: (1) against defendant Thomas, based on allegations of unequal treatment during visits by plaintiff's wife, and (2) against defendant Canino, based on allegations of racial disparity in sanctioning at misconduct hearings. An appropriate order follows.

10. The Third Circuit has recently ruled that an inmate seeking to prove a violation of the Eighth Amendment must show that he has been deprived of "basic human needs, such as food, clothing, shelter, sanitation, medical care and personal safety." *Griffin v. Vaughn*, 112 F.3d 703, 709 (3d Cir. 1997). The *Griffin* court held that conditions in administrative custody, under the same Pennsylvania regulations at issue in this case, "clearly do not involve a deprivation of any basic human need." *Id.* Accepting as true all of plaintiff's allegations and all reasonable inferences that may be drawn from them, and construing them in the light most favorable to the plaintiff, I find that plaintiff has failed to state a claim that he was subjected to cruel and unusual punishment.

11. Plaintiff has asserted that the hearing examiner's credibility determinations denied him due process and equal protection under the Sixth Amendment and under the Pennsylvania Constitution, art. 1, para. 10. Pl.'s Compl. at ¶ 54. An administrative misconduct hearing for an inmate is not a criminal prosecution or proceeding, and is therefore not subject to the full protection of the Sixth Amendment. *See Wolff v. McDonnell*, 418 U.S. 539, 556; 94 S.Ct. 2963, 2975 (1974). Furthermore, there is no due process or equal protection component of the Sixth Amendment. To the extent plaintiff seeks to assert a due process or equal protection claim based on the Fourteenth Amendment, plaintiff has already done so elsewhere in his complaint. Plaintiff's claim is also without legal foundation under the cited section of the Pennsylvania Constitution, which relates to initiation of criminal proceedings, double jeopardy, and eminent domain. Pa. Const. art. 1, § 10.

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:

ORDER

AND NOW, this day of November, 1997, upon consideration of Defendants' Motion for Summary Judgment, and plaintiff's responses thereto, and for the reasons set forth in the accompanying memorandum, IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is:

1. DENIED to defendant Thomas on plaintiff's equal protection claim based on allegations of unequal treatment during visits by plaintiff's wife, and GRANTED on all other claims against Thomas.
2. DENIED to defendant Canino on plaintiff's equal protection claim based on allegations of racial disparity in sanctioning, and GRANTED on all other claims against Canino.
3. GRANTED to defendant Dragovich. The clerk is hereby directed to enter judgment in favor of defendant Martin L. Dragovich only against plaintiff Nieves.

William H. Yohn, Jr., Judge