

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

DANA CARTER and RICHARD : CIVIL ACTION
CARTER, : No. 97-5414
Plaintiffs, :
v. :
TOM RIDGE, et al., :
Defendants. :

M E M O R A N D U M

BUCKWALTER, J.

February 6, 1998

Currently before the court are defendants' Motion to Dismiss the Complaint for Failure to State a Claim, as well as plaintiff Richard Carter's omnibus Motion to Correspond with Co-Defendant; for Leave to Amend his Complaint; and for Reconsideration of this Court's December 22, 1997 Order. The court will grant Defendants' Motion to Dismiss in part and deny it in part; deny Plaintiff's Motion to Correspond without prejudice; and grant Plaintiff's motion for Leave to Amend.¹

The parties are familiar with the essential facts of this action, which are contained in this court's December 22, 1997 Memorandum and Order. Defendants' Motion to Dismiss² was

¹ The court will deny the Motion for Reconsideration of the December 22, 1997 Order, as plaintiffs do not state grounds for reconsideration but indicate that they may in the future. Plaintiffs may seek either appointment of counsel or class certification in the future, should the facts warrant.

² The court may grant a 12(b)(6) motion to dismiss only if a complaint alleges no set of facts which, if proved, would entitle the plaintiff to relief. Hayes v. Gross, 982 F.2d 104, 106 (3d Cir. 1992). The burden is on the defendant to make such a showing. Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991). The court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn

filed prior to the December 22, 1997 Order, which was in turn entered on the day of plaintiffs' response. The Court believes that, in light of the previous Memorandum and Order, the currently-pending motions can be briefly resolved.

The court will grant defendants' Motion to Dismiss the Complaint to the extent that it alleges denial of due process. The Parole Board's discretion is vast, and plaintiffs' allegation that the Board is denying them parole based on past or predicted violent behavior does not fall outside of that discretion. There is simply no protected liberty interest in the expectation of release on parole. Greenholtz v. Inmates of Nebraska Penal and Corrections Complex, 442 U.S. 1, 7 & 11 (1979); Burkett v. Love, 89 F.3d 135, 139 (3d Cir. 1996); Shaw v. Pa. Bd. of Probation and Parole, 671 A.2d 290, 292 (Pa. 1996); Reider v. Pa. Bd. of Probation and Parole, 514 A.2d 967, 971 (Pa. Cmwlth. 1986). Moreover, plaintiffs do not allege that the Parole Board has denied them parole for any impermissible reason such as race or the exercise of access to the courts, see Burkett, 89 F.3d at 139-40; Block v. Potter, 631 F.2d 233, 236 (3d Cir. 1980), or for some other factor "wholly extraneous to the decision of whether or not to grant parole." Weaver v. Pa. Bd. of Probation and Parole, 688 A.2d 766, 773 (Pa. 1997).

therefrom, and view them in the light most favorable to the non-moving party." Rocks v. Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989).

Whether defendants' have run afoul of the Ex Post Facto Clause appears to be a distinct issue, however, and for the reasons enumerated in the December 22, 1997 Memorandum, the court will not dismiss those claims. The court will accordingly grant the plaintiff's Motion to Amend to the extent that it relates to the ex post facto claims.

The court will deny without prejudice Richard Carter's Motion for Leave to Correspond with his co-defendant, as he has not demonstrated that he has either sought or been refused permission to correspond with inmate Dana Carter.

An Order follows.

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O R D E R

AND NOW, this 6th day of February 1998, upon
consideration of:

(1) Defendants' Motion to Dismiss the Complaint
Pursuant to Federal Rule of Civil Procedure 12 (b)(6) (Dkt.
22), and Plaintiffs' Response thereto (Dkt. # 28); and

(2) Plaintiff Richard Carter's Motions for Leave to
Correspond with Co-Defendant; for Leave to Amend the Complaint;
and, for Reconsideration of this Court's December 22, 1997 Order
denying the Motions for Appointment of Counsel and for Class
Certification (Dkt. # 27), and Defendants' Response thereto (Dkt.
30), it is hereby **ORDERED** that:

(1) The Motion to Dismiss is **GRANTED IN PART** and
DENIED IN PART, in accordance with the accompanying Memorandum;

(2) The Motion to Correspond is **DENIED WITHOUT
PREJUDICE**;

(3) The Motion for Leave to Amend is **GRANTED IN PART**, in accordance with the accompanying Memorandum;³ and,

(4) The Motion for Reconsideration is **DENIED** as unnecessary.

BY THE COURT:

RONALD L. BUCKWALTER, J.

³ On February 5, 1998, the Clerk's Office received a copy of Plaintiffs' Amended/Supplemental Complaint dated February 2, 1998. Plaintiffs are given 20 (twenty) days from the date of this Order to file and serve an Amended Complaint in accordance with the Court's December 22, 1997 & February 6, 1998 memoranda. If the plaintiffs still want the February 2, 1998 document to serve as their amended complaint, they must so notify the court and defendants within 20 (twenty) days of the date of this Order.