

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

ZACHARY GREGG : CIVIL ACTION
 :
 v. :
 :
 JAMES W. SMITH, et al. : NO. 97-4894

MEMORANDUM ORDER

Presently before the court is plaintiff's Motion for Leave to Proceed In Forma Pauperis. Because it appears that plaintiff, who is confined at SCI Dallas, is unable to prepay the usual \$150 filing fee to initiate a civil action and has acknowledged his responsibility to pay the fee in installments as provided by 28 U.S.C. § 1915(b), the Motion will be granted.

Plaintiff claims that while he was an inmate at SCI Graterford, defendants violated his constitutional rights by filing and acting upon a false misconduct report resulting in his disciplinary confinement and by refusing to release exculpatory information to him for submission to the state parole board when it considered petitioner's parole request.

Petitioner alleges that defendant Smith filed a false misconduct report about him which resulted in sixty days of restricted or disciplinary confinement. He alleges that the false report was part of the information forwarded to the state parole board which denied his request for parole, apparently in late 1996 or early 1997.

Petitioner alleges that defendant Terra approved the misconduct report knowing it was false. He also alleges that defendant Terra failed to provide him with a notice of the misconduct or an inmate version form and witness list for his disciplinary hearing.

Petitioner alleges that defendant Jones, the hearing examiner who sustained the misconduct charge, falsely noted that petitioner declined to attend the hearing when it should have been apparent that he had no notice. Petitioner also alleges that Mr. Jones "lied" about the basis for sustaining the misconduct charge as he had access to a laboratory report which showed petitioner had tested negative at the time he was accused of drug possession.

Petitioner alleges that defendant Vaughn denied his misconduct appeal as untimely knowing petitioner had a "reasonable excuse" for the delay. Petitioner alleges that Superintendent Vaughn and defendant Jeffes withheld the exculpatory laboratory report from him when he asked for a copy to submit to the parole board.

Plaintiff alleges that because of the misconduct, he lost his prison job.

Plaintiff alleges that after he complained about the foregoing to unidentified "staff," he was placed in the mental health unit where he was forced to take medication against his

will. He does not elaborate on the type, frequency or effects of such medication.

Because plaintiff had no liberty interest which was deprived by sixty days of disciplinary confinement, see Sandin v. Conner, 515 U.S. 472, 486 (1995); Griffin v. Vaughn, 112 F.3d 703, 708 (3d Cir. 1997), he had no right to due process and thus has failed to present a cognizable constitutional claim regarding that confinement. See Smith v. Luciani, 1998 WL 151803, *5 (E.D. Pa. Mar. 31, 1998) (no constitutional claim for use of false misconduct report and refusal to consider exculpatory photographic evidence in imposing seven months of disciplinary confinement); Van Collins v. Washington, 1996 WL 210067, *5 (N.D. Ill. Apr. 9, 1996) (no constitutional claim for filing false misconduct report and conspiring to withhold notice of hearing and exculpatory documentary evidence or for adjudication of guilt by hearing examiner who knew plaintiff was not guilty). Even prior to Sandin, there was no recognized constitutional right to an administrative appeal from an adverse determination at a disciplinary hearing. See Garfield v. Davis, 566 F. Supp. 1069, 1074 (E.D. Pa. 1983). See also Cage v. Cambria, 1996 WL 506863, *1 (N.D. Cal. Aug. 19, 1996).

Similarly, because plaintiff has no protected liberty interest in receiving parole which is discretionary in Pennsylvania, see Weaver v. Pa. Bd. of Probation and Parole, 688

A.2d 766, 770 (Pa. Cmwlth. 1997), the use of erroneous or false information in connection with a parole review is not a federal constitutional violation. See Reffitt v. Nixon, 917 F. Supp. 409, 413-14 (E.D. Va. 1996) (no constitutional claim for providing false information in prison file to parole board which relied upon it in denying parole where parole discretionary under state law).

Plaintiff has no constitutional right to obtain or retain a prison job. See Penrod v. Zavaras, 94 F.3d 1399, 1407 (10th Cir. 1996); Quinn v. Cunningham, 870 F. Supp. 25, 27 (E.D. Pa. 1995).

Plaintiff does have a protected liberty interest in avoiding unwanted treatment with antipsychotic medication or similar drugs with serious potential side effects. See Washington v. Harper, 494 U.S. 210, 221 (1990); Sullivan v. Flannigan, 8 F.3d 591, 598 (7th Cir. 1993). Due process requires that before a state may involuntarily administer such medication in treating an inmate, it must employ adequate procedures to ensure that the inmate's interests are taken into account and must fairly determine that the proposed treatment is appropriate to ameliorate a danger posed by the inmate and is in his medical interest. See Harper, 494 U.S. at 227, 233.

Harper involved the ongoing, long-term treatment of an inmate with a potent antipsychotic drug. An appropriate drug may

be involuntarily administered without a hearing consistent with due process on a short-term emergency basis when, consistent with accepted medical judgment, a doctor determines it is in the medical interest of an inmate who otherwise poses a danger to himself or others. Hogan v. Carter, 85 F.3d 1113, 116-17 (4th Cir. 1996); Wilson v. Chang, 955 F. Supp. 18, 20-21 (D.R.I. 1997). See also U.S. v. Bechara, 935 F. Supp. 892, 894 (S.D. Tex. 1996) (noting difference between use of sedatives and type of potent mind altering drugs at issue in Harper).

If plaintiff in good faith can identify or describe an individual or individuals acting under color of state law who were involved in the administration of a significant drug to him on a repeated or sustained basis against his will without procedural safeguards and a prior finding of medical appropriateness, he may have a cognizable constitutional claim.

ACCORDINGLY, this day of June, 1998, **IT IS HEREBY ORDERED** that plaintiff's Motion for Leave to Proceed In Forma Pauperis is **GRANTED** and, consistent with 28 U.S.C. § 1915(e)(2)(B)(ii), the complaint in this action is **DISMISSED** without prejudice to present an amended complaint within thirty days setting forth a claim for involuntary medication without due process against a particular individual or individuals if this is plaintiff's intent and such can be done in good faith.

BY THE COURT:

JAY C. WALDMAN, J.