

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

THOMAS URBANSKI : CIVIL ACTION  
: :  
: :  
v. : :  
: :  
: :  
MARTIN HORN, et al. : NO. 97-4647

M E M O R A N D U M

**Padova, J.**

September , 1998

Plaintiff, Thomas Urbanski, brings this pro se civil rights action against a number of current and former employees of the Pennsylvania Department of Corrections ("DOC"). Plaintiff's law suit is based on the alleged extortion and retaliation perpetrated by Defendant Robert Purnell, a monitor at Community Corrections Center # 2 ("CCC # 2") operated by the DOC, against Plaintiff while Plaintiff was housed at the CCC. Plaintiff claims that his placement at the CCC was revoked and he was subsequently denied parole because Defendant Purnell tampered with his urine sample to ensure that it tested positive for cocaine.

Before the Court are (1) a Motion for Summary Judgment, filed by Plaintiff and (2) a Motion for Summary Judgment, filed by the following Defendants: Martin F. Horn, Commissioner of the DOC; Donald T. Vaughn, SCI-Graterford Superintendent; Marian Langdon, former Community Corrections Regional Director; Robert

Sunshine, former Director of CCC # 2; Michael Dodson, DOC Special Investigator; and Robert Bitner, a member of the DOC Central Office Review Committee (collectively referred to as the "Moving Defendants").<sup>1</sup> For the reasons set forth below, the Court will deny Plaintiff's Motion for Summary Judgment and grant in part and deny in part Moving Defendants' Motion for Summary Judgment.

I. UNDISPUTED FACTS<sup>2</sup>

Plaintiff was convicted in the Court of Common Pleas of Philadelphia County for vehicular manslaughter and sentenced to four and one-half to ten years confinement in state prison. He began serving his sentence on September 28, 1991 and was housed at SCI-Graterford. On May 8, 1995, Plaintiff was transferred to CCC # 2. On August 17, 1995, Plaintiff's urine sample tested positive for cocaine, and he was issued a misconduct report, number 541908, that same day. The next day, his CCC placement was revoked and he was returned to SCI-Graterford. On August 22, 1995, a disciplinary hearing was held on misconduct 541908 and

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<sup>1</sup>The Moving Defendants' Motion for Summary Judgment is not made on behalf of Defendant Purnell. In addition, after the Moving Defendants filed their Motion, Plaintiff filed a voluntary dismissal of his claims against Defendant Dodson. Therefore, Michael Dodson is no longer a Defendant in this action.

<sup>2</sup>The recitation of facts is drawn from the submissions of the Moving Defendants in support of their Motion for Summary Judgment and the submissions of the Plaintiff in support of his Motion for Summary Judgment.

hearing examiner Kevin Kane found that Plaintiff was guilty of the misconduct.

After Plaintiff's urine tested positive for cocaine, Rochelle Hoyt, Plaintiff's girlfriend, phoned Defendant Langdon, alleging that Plaintiff had not taken any drugs on August 17, that Defendant Purnell had intentionally tampered with Plaintiff's urine sample, and that Defendant Purnell had been extorting Plaintiff during Plaintiff's stay at CCC # 2. Defendant Langdon requested that the DOC conduct an investigation into the allegations against Defendant Purnell.<sup>3</sup> Ms. Hoyt also wrote to Defendant Horn and Defendant Vaughn concerning Defendant Purnell's alleged misconduct. Defendant Vaughn forwarded Ms. Hoyt's letter to the Director of the Bureau of Community Corrections and asked him to review the matter. In addition, Defendants Horn and Vaughn ordered an investigation of Plaintiff's claims. The investigation was conducted by Defendant Dodson. As a result of the investigation, it was determined that Defendant Purnell had been fraternizing with Plaintiff in violation of CCC policy. On December 22, 1995, the Bureau of

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<sup>3</sup>According to Plaintiff, while he was housed at CCC # 2, he was the victim of extortion by Defendant Purnell. When Plaintiff "stood up against Defendant Purnell's extortion practices, Defendant Purnell ordered Plaintiff Urbanski to submit a urine sample." (Am. Compl. at ¶ 17.) Plaintiff further alleges that "Defendant Purnell tampered with Plaintiff's urine sample after Plaintiff refused to be a 'slave' to defendant Purnell's extortion practices." (Id. at ¶ 34.)

Community Corrections reinstated Plaintiff's CCC status because of what they called "a compromising situation created through fraternization with Urbanski by an employee. . ." (Defts.' Mot. Ex. A-9.) Misconduct 541908 remained in Plaintiff's prison file. On December 29, 1995, Plaintiff was reinstated to a different CCC. Some ten months later, on October 15, 1996, Plaintiff's urine sample tested positive for cocaine and he was once again returned to SCI-Graterford. On August 25, 1997, misconduct 541908 was expunged from Plaintiff's prison file.

Prior to Plaintiff's December 29, 1995 CCC reinstatement, the SCI-Graterford staff had reviewed Plaintiff for parole in anticipation of his February 1996 review by the parole board. On October 23, 1995, the staff voted against Plaintiff's parole. The staff's vote came after Plaintiff had been found guilty of misconduct 541908 but before the investigation into his claims had been completed. The Deputy for Treatment, the Deputy for Operations and Defendant Vaughn voted after the investigation had been completed. They all voted to recommend Plaintiff for parole based on his CCC reinstatement. The Deputy for Operations noted the following: "'Hot' urine results were possibly tampered with. Staff has been disciplined." (Id. Ex. B-7.) The votes of the staff as well as those of the Deputy for Treatment, the Deputy for Operations and Defendant Vaughn were all recorded on the same "Vote Sheet." On May 22, 1996, the Parole Board refused to grant

parole to Plaintiff. The reasons were stated as follows:

Substance abuse. Assaultive instant offense. Victim injury. Weapon involved in the commission of offense -- automobile. Your need for counseling and treatment. Failure to participate in and benefit from a treatment program for substance abuse prior to return to SCI-Graterford. Unfavorable recommendation from the Department of Corrections and District Attorney.

(Id. Ex. B-8.)

## II. PLAINTIFF'S CLAIMS

Plaintiff's original Complaint was against Defendant Purnell only.<sup>4</sup> On November 3, 1997, the Court granted Plaintiff leave to file an Amended Complaint, adding the following Defendants:

Martin F. Horn; Donald T. Vaughn; Marian Langdon; Robert Sunshine; Michael Dodson; and Robert Bitner. Plaintiff has sued all of the Defendants individually and in their official capacities. He seeks recovery of compensatory and nominal damages for his pain and suffering, mental anguish, and loss of wages. He also seeks a declaratory judgment, a preliminary and permanent injunction, nominal damages for his deprivation of rights, and punitive damages.

In his verified Motion for Summary Judgment, Plaintiff states that his claims against Defendants are based on the following provisions of the United States Constitution: the First

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<sup>4</sup>Although Defendant Purnell was served with the Complaint on December 15, 1997 (Doc. No. 12), he has not answered the Complaint.

Amendment (prohibiting Defendants from retaliating against him for filing grievances and/or complaints); the Fourth Amendment (protecting Plaintiff's rights to be secure in his person); the Fifth Amendment (protecting Plaintiff from being deprived of his life, liberty, and/or property without due process of law and from the taking of his private property for public use without just compensation); the Sixth Amendment (protecting Plaintiff's right to have compulsory process for obtaining witnesses in his favor); the Eighth Amendment (protecting Plaintiff from the infliction of cruel and unusual punishment); the Thirteenth Amendment (protecting Plaintiff from involuntary servitude); and the Fourteenth Amendment (protecting Plaintiff's due process and equal protection rights).

Plaintiff argues that he is entitled to judgment in his favor based on the actions of Defendant Purnell, which resulted in the revocation of his CCC placement and the denial of his parole request. He also states that he "was subjected to inadequate disciplinary procedures by the Defendant Hearing Examiner Mr. Kevin Kane."<sup>5</sup> (Pl.'s Mot. at ¶ 14.) At the disciplinary hearing held on misconduct 541908, Kane found that Plaintiff was guilty of the misconduct. Plaintiff alleges a

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<sup>5</sup>The Court notes that although Plaintiff's Motion for Summary Judgment and Response to Defendants' Motion for Summary Judgment identifies Kevin Kane as "Defendant," Mr. Kane is not a defendant in this action.

number of deficiencies in the hearing, including the denial of his right to call witnesses. According to Plaintiff, he appealed Kane's decision on the basis, inter alia, that he was refused the right to call witnesses. (Id. at ¶ 35.) His appeal was denied. Defendant Vaughn was involved in a second level of appeal concerning Kane's decision. In connection with the second level appeal, Plaintiff contends that he told Defendant Vaughn about the misconduct of Defendant Purnell and that Defendant Vaughn called him a liar and denied his second level appeal. (Id. at ¶¶ 38-39.) Plaintiff maintains that the third and final appeal was handled by the Central Office Review Committee, of which Defendant Bitner is a member. (Id. at ¶ 40.) Defendant Horn appointed three members of the Central Office Review Committee to conduct the final appeal. Plaintiff wrote directly to Defendant Horn in August 1995 concerning the lack of investigation into the actions of Defendant Purnell.

### III. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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." Fed.R.Civ.P. 56(c). An issue is "genuine" if there is sufficient evidence with which

a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). A factual dispute is "material" if it might affect the outcome of the case. Id.

A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the moving party's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325, 106 S. Ct. at 2554. After the moving party has met its initial burden, "the adverse party's response . . . must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). That is, summary judgment is appropriate if the nonmoving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. at 322, 106 S. Ct. at 2552. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party.

Anderson v. Liberty Lobby, Inc., 477 U.S. at 255, 106 S. Ct. at 2513 ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.").

#### IV. DISCUSSION

Plaintiff brings his claims against Defendants pursuant to 42 U.S.C.A. § 1983 (West Supp. 1998). To state a claim under section 1983, Plaintiff must allege that Defendants, acting under color of state law, caused the deprivation of a right secured by the Constitution or laws of the United States. Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 931, 102 S. Ct. 2744, 2750-51 (1982).

Defendants maintain that all of Plaintiff's claims fail because Plaintiff was not deprived of any constitutional rights. Defendants further contend that they are immune from suit under the doctrine of qualified immunity, that Plaintiff's damages claims are barred by the Eleventh Amendment of the United States Constitution, and that Plaintiff's request for compensatory damages for mental anguish fails under the Prison Litigation Reform Act ("PLRA"), 42 U.S.C.A. § 1997e(e)(Supp. 1998). The Court will address each claim and defense in turn.

##### A. Plaintiff's Claims

###### 1. Fourteenth Amendment--Procedural Due Process

The crux of Plaintiff's case is that Defendant Purnell tampered with Plaintiff's urine sample, which formed the basis for a false misconduct charge against Plaintiff and resulted in the revocation of Plaintiff's placement at CCC # 2 and the denial of Plaintiff's parole request. "Prisoners are entitled to be free from arbitrary actions of prison officials." Hanrahan v. Lane, 747 F.2d 1137, 1140 (7th Cir. 1984). The protection against such arbitrary actions are the procedural due process requirements set forth in Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963 (1974). Id. As the United States Court of Appeals for the Seventh Circuit in Hanrahan v. Lane explained, "an allegation that a prison guard planted false evidence which implicates an inmate in a disciplinary infraction fails to state a claim for which relief can be granted where the procedural due process protections as required in Wolff v. McDonnell are provided." Id. at 1141. Following Hanrahan v. Lane, the United States Court of Appeals for the Second Circuit ("Second Circuit") in Freeman v. Rideout, 808 F.2d 949, 951, held that "[t]he prison inmate has no constitutionally guaranteed immunity from being falsely or wrongly accused of conduct which may result in the deprivation of a protected liberty interest. The plaintiff, as all other prison inmates, has the right not to be deprived of a protected liberty interest without due process of law."

The parties have not cited, and this Court has not found, a

decision by the United States Court of Appeals for the Third Circuit ("Third Circuit") involving the filing of unfounded charges against a prisoner that resulted in disciplinary action against the prisoner. Courts in this district, however, have consistently held that, as long as the procedural due process requirements set forth in Wolff v. McDonnell are met, such a claim fails as a matter of law. Jones v. Horn, Civ.A.No. 97-3921, 1998 WL 297636, at \*6 (E.D. Pa. June 4, 1998)(Bechtle, J.); Smith v. Luciani, Civ.A.Nos. 97-3037 and 97-3613, 1998 WL 151803, at \*5 (E.D. Pa. March 31, 1998)(Robreno, J.); Nelson v. Commonwealth, Civ.A.No. 97-6548, 1997 WL 793060, at \*3 (E.D. Pa. Dec. 9, 1997)(Dubois, J.); Maclean v. Secor, Civ.A.No. 93-2383, 876 F. Supp. 695, 699 (E.D. Pa. 1995); Swint v. Vaughn, Civ.A.No. 94-3351, 1995 WL 366056, at \*5 (June 19, 1995)(Waldman, J.); Seymour/Jones v. Blair, Civ.A.No. 92-5773, 1993 WL 497903, at \*3 (E.D. Pa. Dec. 1, 1993)(VanArtsdalen, J.); Bethea v. Vaughn, Civ.A.Nos. 89-7049 and 89-7759, 1990 WL 9832, at \*2 (E.D. Pa. Feb. 1, 1990)(Lord, J.); Bodge v. Zimmerman, Civ.A.No. 86-6051, 1988 WL 100749, at \*5 (E.D. Pa. Sept. 23, 1988)(Cahn, J.); Vines v. Howard, 658 F. Supp. 34, 37 (E.D. Pa. 1987) (Newcomer, J.).<sup>6</sup>

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<sup>6</sup>In all of these decisions, the claims made by the prisoners are analyzed as procedural due process claims. The Third Circuit has not recognized a substantive due process claim in cases such as these. The Second Circuit, however, has recognized that in certain limited circumstances a prisoner may be able to state a substantive due process claim in addition to and separate from a procedural due process claim. Jones v. Coughlin, 45 F.3d 677,

In addition to challenging the evidence underlying misconduct 541908, Plaintiff alleges that the disciplinary hearing conducted by Kevin Kane on Plaintiff's misconduct 541908 was constitutionally infirm. Moving Defendants argue that, as a matter of law, Plaintiff received all of the process that he was due in connection with the disciplinary hearing.<sup>7</sup> In this regard, Moving Defendants state that Plaintiff was given a written misconduct that informed him of the reasons for his transfer from CCC # 2 back to SCI-Graterford, that he had a

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679 (2d Cir. 1995). Where a prisoner alleges that prison officials intentionally filed false disciplinary charges against him or her in retaliation for the prisoner's exercise of a constitutional right, such as petitioning the government for redress of a grievance, then the prisoner states a claim for infringement of his or her substantive due process rights. Franco v. Kelly, 854 F.2d 584, 589 (2d Cir. 1988). In this case, Plaintiff argues that Defendant Purnell retaliated against him for Plaintiff's refusal to comply with Defendant Purnell's extortion demands, not because Plaintiff filed a grievance concerning Defendant Purnell's conduct. In this regard, Plaintiff admitted at his deposition that he did not make any of the Defendants aware of the conduct of Defendant Purnell until on or after August 18, 1995, the date he was transferred to SCI-Graterford. (Defts.'s Mot. Ex C at 84.) On this record, the Court finds that Plaintiff has not stated a substantive due process claim.

<sup>7</sup>In their Motion for Summary Judgment, Defendants argue that the Court should not address this claim because it was not raised in the Complaint or Amended Complaint. Although Plaintiff does not detail the alleged deficiencies in the disciplinary hearing in his pleadings, he does include allegations concerning his receipt of misconduct 541908 and the discipline he received as a result. In the interests of justice and in keeping with the liberal pleading standards afforded pro se prisoners, the Court will entertain Plaintiff's procedural due process claim. Boag v. MacDougall, 454 U.S. 364, 365, 102 S. Ct. 700, 701 (1982); Todaro v. Bowman, 872 F.2d 43, 44 n.1 (3d Cir. 1989).

hearing on the misconduct, that he presented his version of the facts in a sworn affidavit, that he testified at the hearing, and that he received written findings of the hearing examiner.

(Defts.' Mot. at 31.)

In Wolff v. McDonnell, the Supreme Court set forth the requirements of due process in prison disciplinary hearings. A prisoner is entitled to (1) written notice of the charges and no less than 24 hours to marshal the facts and prepare a defense for an appearance at the disciplinary hearing, (2) a written statement by the fact finder as to the evidence relied on and the reasons for the disciplinary action, and (3) an opportunity "to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." Wolff v. McDonnell, 418 U.S. at 563-71, 94 S. Ct. at 2978-82. In this case, Plaintiff contends that his procedural due process rights were violated because he was not allowed to call witnesses on his behalf at the disciplinary hearing.

It is undisputed that no witnesses appeared on Plaintiff's behalf at the disciplinary hearing. The relevant inquiry, however, is whether Plaintiff was given an opportunity to call witnesses in his defense. The only evidence submitted by the Moving Defendants on this issue is a copy of Kane's written disciplinary report, which reads in part as follows:

[Plaintiff] states he has witnesses he wishes to call, but states he never received a witness form. This report is clearly documented that BQ0957 [Urbanski's DC number] was issued a witness and [unintelligible] form. I find his request for witnesses at this time and date to be [untimely?]. This request is denied.

(Defts.' Mot. Ex. B-3.)<sup>8</sup> Plaintiff testified at his deposition that he never received a witness form. (Defts.' Mot. Ex. C, Pl.'s Dep. at 92.) He further testified as follows:

I went to Mr. Kane and he said, 'Do you have any witnesses that are DOC staff members?' I said, "No. These are people that can tell you what happened though.' He said, ' Well, if they're not DOC staff, they're not relevant and you can't have them here anyway.' I said, okay, and I explained the situation to him.

(Id. at 92-93.) On this record, the Court finds that disputed issues of material fact exist as to whether Plaintiff was given the opportunity to call witnesses at the disciplinary hearing.

Moving Defendants next argue that even if the Court finds that issues of material fact exist as to the required elements of Plaintiff's procedural due process claim, Plaintiff's claim still fails because Plaintiff cannot demonstrate that Moving Defendants had any personal involvement in the disciplinary hearing. To state a viable section 1983 claim, Plaintiff must demonstrate that Defendants participated in, had knowledge of, or acquiesced

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<sup>8</sup>Moving Defendants failed to provide the Court with an affidavit from Kane regarding the disciplinary hearing and the contents of this report. Because the handwriting contained in this report was difficult to decipher, a number of key words were unintelligible.

in the alleged unlawful conduct. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).

Plaintiff submits, and Defendants do not dispute, that Defendants Horn, Vaughn, and Bitner were involved in the administrative appeals of Kane's decision. Drawing all reasonable inferences in favor of Plaintiff as the Court must under Rule 56, the Court finds that disputed issues of material fact exist, based on the Rule 56 submissions, as to whether these Defendants had knowledge of or acquiesced in Kane's denial of Plaintiff's request for witnesses. There is no evidence in the Rule 56 submissions, however, that Defendants Langdon and Sunshine had any involvement in the alleged unlawful conduct. Therefore, the Court will grant summary judgment in favor of Defendants Langdon and Sunshine and will deny summary judgment as to Defendants Horn, Vaughn, and Bitner on this claim.

## 2. First Amendment

In Mt. Healthy City School District Bd. of Educ. v. Doyle, 429 U.S. 274, 97 S. Ct. 568 (1977), the Supreme Court held that an individual has a viable claim against the government when he or she is able to prove that the government took action against him or her in retaliation for his or her exercise of First Amendment rights.

To prevail on his First Amendment retaliation claim,

Plaintiff must establish the following three elements: (1) he engaged in protected activity; (2) Defendants responded with retaliation; and (3) his protected activity was the cause of Defendants' retaliation. Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997). Plaintiff's pleadings are completely devoid of allegations that any of the named Defendants retaliated against him for engaging in activity protected under the First Amendment. Moreover, there is no evidence before the Court of any such retaliation. Under these circumstances, the Court finds that Plaintiff's First Amendment claim fails as a matter of law.<sup>9</sup>

### 3. Fourth Amendment

In his Motion for Summary Judgment, Plaintiff contends that the random urinalysis conducted on August 13, 1995 violated his Fourth Amendment right against unreasonable searches and seizures. Probable cause is not required prior to ordering a prison inmate to submit to a urine test; it is only necessary

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<sup>9</sup>There exists a document authored by the Plaintiff, dated July 20, 1998, and titled "Claim of Retaliation." This "Claim of Retaliation" is based on alleged retaliatory conduct by a number of employees of SCI-Houtzdale, where Plaintiff is currently housed. Although Plaintiff apparently submitted this document in connection with this case, it was never filed or docketed as part of this case because the alleged retaliatory conduct that forms the basis for this claim does not involve the named Defendants in this action. Rather, Plaintiff's claim of retaliation involves the alleged conduct of SCI-Houtzdale employees and so must be filed in the United States District Court for the Western District of Pennsylvania.

that the bodily intrusion be conducted in a reasonable manner. Bell v. Wolfish, 441 U.S. 520, 558-60, 99 S. Ct. 1861, 1884-85 (1979). Urine tests conducted as part of a policy of random urine testing do not violate the Fourth Amendment. Lucerno v. Gunter, 17 F.3d 1347, 1349-50 (10th Cir. 1994); Beckwith v. Lehman, Civ.A.No. 93-6162, 1994 WL 263333 (E.D. Pa. June 10, 1994) (upholding SCI-Frackville's policy of random urine testing). As a condition of his placement at CCC # 2, Plaintiff, in a signed acknowledgment, consented to urine testing while he was housed at the CCC. (Defts.' Mot. Ex. A-2.) There is no evidence before the Court that Plaintiff's urine test was conducted in an unreasonable manner. Therefore, Plaintiff's Fourth Amendment claim fails as a matter of law.

#### 4. Fifth Amendment

Plaintiff alleges that his Fifth Amendment rights to due process and to protection from the taking of his private property for public use without just compensation were violated by Defendants. Generally, the Fifth Amendment is applicable to cases in which the plaintiff claims the federal government violates a liberty or property interest. Bennett v. White, 865 F.2d 1395, 1406 (3d Cir. 1989). Plaintiff makes no such claim in this case.

As Moving Defendants recognize, however, some provisions of

the Fifth Amendment, including the takings clause, have been applied to the states through the due process clause of the Fourteenth Amendment. The takings clause of the Fifth Amendment provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. Plaintiff asserts a claim under the takings clause. Although the precise nature of his claim is unclear, it is apparently based on the actions of Defendant Purnell. For example, Plaintiff testified at his deposition that Defendant Purnell made Plaintiff buy over \$100 in parts for repairs on Defendant Purnell's car and made numerous personal calls on Plaintiff's cellular phone without paying Plaintiff for the cost of the calls. (Defts.' Mot. Ex. C at 73-75.)

Even accepting Plaintiff's testimony in this regard as true, the "taking" by Defendant Purnell of Plaintiff's personal property for Defendant Purnell's own personal use does not implicate the takings clause. By its terms, the takings clause comes into play when the government takes private property for "public use." Yee v. City of Escondido, 503 U.S. 519, 522, 112 S. Ct. 1522, 1526 (1992). In addition, there is no evidence in the record that any of the Moving Defendants had knowledge of Defendant Purnell's actions. Rode v. Dellarciprete, 845 F.2d at 1207. Under these circumstances, Plaintiff's Fifth Amendment claim under the takings clause fails as a matter of law.

5. Sixth Amendment

Plaintiff argues that his Sixth Amendment right to present witnesses at his disciplinary hearing was violated. The Sixth Amendment guarantees apply only to criminal prosecutions. Kirby v. Illinois, 406 U.S. 682, 690, 92 S. Ct. 1877, 1882 (1972). Prison disciplinary proceedings are not criminal prosecutions within the meaning of the Sixth Amendment. Wolff v. McDonnell, 418 U.S. at 556, 94 S. Ct. at 2975. The denial of Plaintiff's right to present witnesses at his disciplinary hearing was properly considered by the Court as a Fourteenth Amendment procedural due process claim, as set forth above. Plaintiff's Sixth Amendment claim fails as a matter of law.

6. Eighth Amendment

The Eighth Amendment proscribes cruel and unusual punishments, that is, punishments that involve the unnecessary and wanton infliction of pain or are grossly disproportionate to the severity of the crime. Rhodes v. Chapman, 452 U.S. 337, 345-46, 101 S. Ct. 2392, 2398-99 (1981). Prison sentences and confinement in penal institutions by themselves do not constitute cruel and unusual punishments. Peterkin v. Jeffes, 855 F.2d 1021, 1027 (3d Cir. 1988). Plaintiff's return to SCI-Graterford did not violate the Eighth Amendment. Therefore, Plaintiff's Eighth Amendment claim fails as a matter of law.

7. Thirteenth Amendment

Plaintiff claims that Defendants violated his Thirteenth Amendment right to be free from involuntary servitude. Convicted prisoners, such as Plaintiff, are excluded from the prohibition of involuntary servitude set forth in the Thirteenth Amendment. Vanskike v. Peters, 974 F.2d 806, 809 (7th Cir. 1992).

To the extent that Plaintiff is arguing that the alleged extortion perpetrated by Defendant Purnell constitutes involuntary servitude, Plaintiff has failed to state a claim under the Thirteenth Amendment. In defining the contours of the Thirteenth Amendment, the United States Court of Appeals for the Third Circuit has stated that it will take a contextual approach to claims of involuntary servitude by confining the Thirteenth Amendment to those situations that are truly "akin to African slavery." United States v. Bertoli, 994 F.2d 1002, 1022 (3d Cir. 1993). The Court finds that the alleged extortion by Defendant Purnell is not "akin to African slavery." Moreover, there is no evidence that the Moving Defendants were aware of the alleged extortion perpetrated by Defendant Purnell. Rode v. Dellarciprete, 845 F.2d at 1207. Therefore, Plaintiff's Thirteenth Amendment claim fails as a matter of law.

8. Fourteenth Amendment --Due Process (Liberty Interest)

Plaintiff does not have a cognizable liberty interest in remaining in a pre-release program. Wells v. Commonwealth, Civ.A.No. 95-6839 (E.D. Pa. Nov. 1, 1995)(Padova, J.); Vines v. Vaughn, Civ.A.No. 92-3564, 1992 WL 247113, at \* 1 (E.D. Pa. Sept. 23, 1992). There also is no liberty interest in remaining in a particular pre-release facility or being assigned to a particular pre-release facility. Lott v. Arroyo, 785 F. Supp. 508, 509-10 (E.D. Pa. 1991).

Similarly, Plaintiff does not have a cognizable liberty interest in release on parole. Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1, 7, 99 S. Ct. 2100, 2104 (1979). The Supreme Court has recognized that release on parole gives a prisoner a liberty interest in remaining on parole. Young v. Harper, \_\_\_ U.S. \_\_\_, 117 S. Ct. 1148, 1151-52 (1997). Here, however, Plaintiff was never released on parole, so the liberty interest discussed in Young v. Harper has no application to Plaintiff.

9. Fourteenth Amendment--Due Process (Reputation Interest)

Plaintiff alleges that the failure of Defendants to expunge misconduct 541908 from his file put him in a bad light before the

Parole Board and ultimately resulted in the denial of his parole request. To the extent that Plaintiff is alleging damage to his reputation under the due process clause of the Fourteenth Amendment, such a claim fails as a matter of law.

The Supreme Court in Paul v. Davis, 424 U.S. 693, 96 S. Ct. 1155 (1976), held that reputation alone is not an interest protected by the Due Process Clause. Damage to reputation is actionable under Section 1983 only if it occurs in the course of or is accompanied by a change or extinguishment of a right or status guaranteed by state law or the Constitution. Id. at 701-12, 96 S. Ct. at 1160-65. This element is referred to as the "reputation-plus" requirement. Ersek v. Township of Springfield, 102 F.3d 79, 83 n.5 (3d Cir. 1997).

Here, there is no evidence that the alleged injury to Plaintiff's reputation occurred in the course of or was accompanied by a change or extinguishment of a right or status guaranteed by state law or the Constitution. Plaintiff argues that the failure to expunge the misconduct from his official prison file resulted in the denial of his parole. Denial of parole, however, does not satisfy the "reputation-plus" requirement because Plaintiff has no right to release on parole under Pennsylvania law or the United States Constitution. Greenholtz, 442 U.S. at 7, 99 S. Ct. at 2104; Weaver v. Pennsylvania Board of Probation and Parole, 688 A.2d 766, 770

(Pa. Commw. Ct. 1997). Therefore, Plaintiff's due process claim based on his reputation interest fails as a matter of law.<sup>10</sup>

10. Fourteenth Amendment--Equal Protection

In order to sustain a claim under section 1983 based on the Equal Protection Clause of the Fourteenth Amendment, Plaintiff must show he "was a member of a protected class, was similarly situated to members of an unprotected class, and was treated differently from the unprotected class." Wood v. Rendell, Civ.A.No. 94-1489, 1995 WL 676418, at \*4 (E.D. Pa. Nov. 3, 1995) (citation omitted). In its most general sense, the Equal Protection Clause directs that "all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439, 105 S. Ct. 3249, 3254 (1985). To maintain an action under the Equal Protection Clause, a plaintiff "must show intentional discrimination against him because of his membership in a particular class, not merely that he was treated unfairly as an individual." Huebschen v. Dept. of Health & Social Service, 716 F.2d 1167, 1171 (7th Cir. 1983); see also Murray v. Pittsburgh Board of Public Education, 919 F. Supp.

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<sup>10</sup>However Plaintiff's claim concerning the failure to expunge the misconduct is construed, there is no constitutional violation where the parole board relies upon false information in a prison file in denying an inmate parole. Gregg v. Smith, Civ.A.No. 97-4894, 1998 WL 309860, at \* 2 (E.D. Pa. June 10, 1998).

838, 847 (W.D. Pa. 1996).

The record before the Court is devoid of any evidence of class-based intentional discrimination against Plaintiff. Consequently, Plaintiff's equal protection claim fails as a matter of law.

#### 11. Pennsylvania Constitution

Plaintiff alleges that the Defendants violated the Pennsylvania Constitution. This Court does not have jurisdiction over this claim because the Eleventh Amendment bars this Court from ordering state officials to conform their conduct to state law. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 105, 104 S. Ct. 900, 910 (1984). Therefore, this claim fails as a matter of law.

#### B. Eleventh Amendment, the PLRA, and Qualified Immunity

As set forth above, Plaintiff's procedural due process claim against Defendants Horn, Vaughn, Bitner, and Purnell will go forward. To the extent that Plaintiff seeks recovery of damages against these Defendants in their official capacities, however, his claims are barred by the Eleventh Amendment.<sup>11</sup> Kentucky v. Graham, 473 U.S. 159, 169, 105 S. Ct. 3099, 3107 (1985). Therefore, the Court will grant summary judgment, as a matter of

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<sup>11</sup>Although a state may consent to be sued in federal court, thereby waiving its immunity, Pennsylvania has not done so. Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981).

law, on Plaintiff's claim for damages on his procedural due process claim against the Defendants in their official capacities.

Section 1997e(e) of the PLRA provides that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." Plaintiff seeks recovery of damages for mental anguish and pain and suffering. There is no evidence in the record of a prior physical injury suffered by Plaintiff. Under these circumstances, Plaintiff cannot recover for emotional or mental injuries. Warcloud v. Horn, Civ.A.No. 97-3657, 1998 WL 255578, at \*2 (E.D. Pa. May 20, 1998). Therefore, the Court will grant summary judgment, as a matter of law, in favor of Defendants as to Plaintiff's claim for damages for mental anguish and pain and suffering resulting from the alleged deprivation of his procedural due process rights.

Finally, Defendants argue they are entitled to qualified immunity. The qualified immunity doctrine provides that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982). Qualified immunity does not apply, however,

"if reasonable officials in the defendants' position at the relevant time could have believed, in light of what was in the decided case law, that their conduct would be unlawful."

Abdul-Akbar v. Watson, 4 F.3d 195, 202 (3d Cir. 1993)(internal quotation and citation omitted).

The law with respect to Plaintiff's right to have witnesses present on his behalf at the disciplinary hearing was settled at the time that plaintiff's disciplinary hearing was held, Kane rendered his decision, and Kane's decision was upheld at the various levels of the appeals process. Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963 (1974). The Court, however, cannot assess the reasonableness of Defendants' conduct because of the existence of disputed issues of fact -- that is, what Defendants did and what facts Defendants knew at the time they acted. For this reason, the Court cannot determine at this stage in the proceedings that, as a matter of law, Defendants could have reasonably believed that their conduct was lawful. Therefore, the Moving Defendants are not entitled to summary judgment with respect to their qualified immunity defense.

v. CONCLUSION

For the foregoing reasons, the Court will deny Plaintiff's Motion for Summary Judgment in its entirety and will grant in part and deny in part Moving Defendants' Motion for Summary

Judgment. Plaintiff's Fourteenth Amendment procedural due process claim against Defendants Horn, Vaughn, and Bitner will go forward. Summary judgment in favor of Defendants Langdon and Sunshine on Plaintiff's Fourteenth Amendment procedural due process claim will be granted. In addition, summary judgment in favor of Defendants Horn, Vaughn, Langdon, Sunshine, and Bitner will be entered as to all of Plaintiff's other claims.<sup>12</sup>

An appropriate Order follows.

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<sup>12</sup>Although Defendant Purnell did not join in the Moving Defendants' Motion for Summary Judgment, all of Plaintiff's constitutional claims against Defendant Purnell fail as a matter of law. Therefore, pursuant to 42 U.S.C. § 1997e(c)(1), the Court will dismiss on its own motion all claims against Defendant Purnell based on the Pennsylvania and United States Constitutions. Although not identified as such, Plaintiff has made allegations and submitted facts to support state law claims against Defendant Purnell for conversion and fraud and deceit. (Exs. In Supp. Pl.'s Mot.) Because Plaintiff is proceeding pro se in this matter, the Court will entertain these state law claims against Defendant Purnell. Boag v. MacDougall, 454 U.S. at 365, 102 S. Ct. at 701; Todaro v. Bowman, 872 F.2d at 44 n.1.

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

THOMAS URBANSKI : CIVIL ACTION  
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v. :  
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MARTIN HORN, et al. : NO. 97-4647

**O R D E R**

**AND NOW**, this        day of September, 1998, upon consideration of Plaintiff's Motion for Summary Judgment (Doc. No. 28) and Defendants' Response thereto (Doc. No. 29), and Defendants' Motion for Summary Judgment (Doc. No. 30) and Plaintiff's Response thereto (Doc. No. 39), **IT IS HEREBY ORDERED** that

1. Michael Dodson is **DISMISSED** as a Defendant in this case, pursuant to the voluntary dismissal by Plaintiff.
2. Plaintiff's Motion for Summary Judgment is **DENIED**.
3. Defendants' Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART**.
4. Judgment is entered in favor of Defendants Horn, Vaughn, Langdon, Sunshine, Bitner, and Purnell and

against Plaintiff on Plaintiff's claims under the First, Fourth, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth (equal protection, due process-- liberty interest, and due process--reputation interest) Amendments.

5. Judgment is entered in favor of Defendants Langdon, Sunshine, and Purnell and against Plaintiff on Plaintiff's Fourteenth Amendment procedural due process claim.

6. The Fourteenth Amendment procedural due process claim against Defendants Horn, Vaughn, and Bitner will go forward.

7. State law claims for conversion and fraud and deceit will go forward against Defendant Purnell.

BY THE COURT:

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John R. Padova, J.