

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

RICHARD CARTER	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
MARTIN L. DRAGOVICH, et al.	:	NO. 96-6496
	:	94-7163

O'Neill, J. July , 1999

MEMORANDUM

Plaintiff Richard Carter, an inmate in the custody of the Pennsylvania Department of Corrections (“DOC”), brings this civil rights action against the Commonwealth of Pennsylvania; the DOC; the State Correctional Institution at Mahanoy (“SCI-Mahanoy”); Martin L. Dragovich, Superintendent, SCI-Mahanoy; Edward Klem, Deputy Superintendent of Specialized Services, SCI-Mahanoy; and Captain James McGrady. In his amended complaint plaintiff alleges that defendants violated his First Amendment right to access to the courts (Count I), retaliated against him for his activities as a “jailhouse lawyer” (Count II), and conspired together to deprive him of his First Amendment rights (Count III). Plaintiff asserts claims for both monetary damages and injunctive and declaratory relief pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985(3).

Presently before me are defendants’ motion to dismiss the complaint for failure to state a claim for which relief may be granted and plaintiff’s response thereto. For the following reasons, I will grant defendants’ motion in part and deny it in part.

As an initial matter, plaintiff does not challenge defendants' assertion that claims against the Commonwealth, the DOC, and SCI-Mahanoy are barred by the 11th Amendment.¹ He also does not contest defendants' argument that his claims for injunctive and declaratory relief should be dismissed as moot.² Therefore, with respect to these claims, defendants' motion will be granted as unopposed.

I.

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the complaint. In considering a motion to dismiss, I must accept as true all well-pleaded factual allegations contained in the complaint and draw all reasonable inferences in plaintiff's favor. I may consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case without converting a Rule 12(b)(6) motion into a motion for summary judgment. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1385, n. 2 (3d Cir. 1994). I may grant defendants' motion only if I conclude that plaintiff would not be entitled to relief under any set of facts consistent with his allegations. See Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F. 3d 1250, 1261 (3d Cir. 1994).

II.

In Count I of the amended complaint, plaintiff asserts a § 1983 claim for alleged violations of his First Amendment right to access to the courts. He alleges that “[t]he law library and the

¹ Plaintiff's claims against the Commonwealth, the DOC, and SCI-Mahanoy are in fact barred as a matter of law. See Wills v. Michigan Dept. of State Police, 491 U.S. 58, 66 (1989); Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 697 (3d Cir. 1996).

² Plaintiff has been transferred from SCI-Mahanoy to SCI-Dallas. “[A] prisoner lacks standing to seek injunctive relief if he is no longer subject to the alleged conditions he attempts to challenge.” Weaver v. Wilcox, 650 F.2d 22, 27 (3d Cir. 1981).

practices and procedures with respect thereto at SCI-Mahanoy, including but not limited to, policies relating to legal reference aids and access to provide legal services, . . . , fail to meet the clearly established minimum constitutional standard for meaningful access to the courts.” Am. Compl. ¶52.

It has long been recognized that inmates enjoy a constitutional right to access to the courts. Lewis v. Casey, 518 U.S. 343, 350 (1996); Bounds v. Smith, 430 U.S. 817, 821, 828 (1977). This right requires that prison officials provide inmates with a reasonably adequate opportunity to file nonfrivolous legal claims challenging their convictions or conditions of confinement. Lewis, 518 U.S. at 350-56. Though prison law libraries and legal assistance programs are “one constitutionally acceptable method to assure meaningful access to the courts”, Bounds, 430 U.S. at 830, an inmate has no independent right to such facilities or programs. Lewis, 518 U.S. at 351. Put more simply, the right of access to the courts “guarantees no particular methodology but rather the conferral of a capability --the capability of bringing contemplated challenges to sentences or conditions of confinement before courts.” Id. at 356.

To establish a deprivation of access to the courts, an inmate must show actual injury. Id. at 349. In the present case, however, plaintiff does not allege that defendants’ conduct hindered his own litigation efforts in any way. Though he does allege that the seizure of legal papers from his cell “caused delay for at least 15 inmates” to whom he was providing legal assistance, any injury resulting from that delay was suffered by the other inmates, not plaintiff.³ Since plaintiff fails to allege any actual injury as a result of defendants’ conduct, Count I will be dismissed.

³ It is not alleged that this unspecified delay led to any adverse effect on any ongoing litigation. Delays for which an inmate seeks and receives an extension of time for filing a brief may not constitute an actual hindrance to meaningful access to the courts. See Crawford-El v. Britton, 951 F.2d 1314, 1321-22 (D.C. Cir. 1991); Sowell v. Vose, 941 F.2d 32, 35 (1st Cir. 1991).

In Count II plaintiff asserts a § 1983 claim alleging that defendants retaliated against him for exercising his rights under the First Amendment. More specifically, plaintiff alleges that defendants retaliated against him for his activities as a “jailhouse lawyer” by confiscating legal papers without cause, conducting unwarranted searches of his cell, threatening him, subjecting him to disciplinary action, and eventually transferring him to another facility. Defendants, however, contend that plaintiff has no right to act as a jailhouse lawyer and therefore cannot state a claim for retaliation.

"Retaliation for the exercise of constitutionally protected rights is itself a violation of rights secured by the Constitution actionable under § 1983." White v. Napoleon, 897 F.2d 103, 111-12 (3d Cir.1990). Though incarceration naturally entails a restriction on constitutional freedoms, “a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.” Pell v. Procunier, 417 U.S. 817, 822 (1974). Any restrictions upon an inmate’s First Amendment rights must operate in a neutral fashion, without regard to the content of the expression. Abu-Jamal v. Price, 154 F.3d 128, 133 (3d Cir. 1998), citing Turner v. Safley, 482 U.S. 78, 90 (1987). Content neutrality in the prison context, however, is analyzed differently than it is outside the prison’s walls. Abu-Jamal v. Price, 154 F.3d 128, 133 (3d Cir. 1998).⁴ “For example, limiting speech that may include escape plans or incite other prisoners would be a valid response to a potential security threat, ‘even though the same

⁴ In Abu-Jamal, the Court of Appeals reversed the district court’s denial of an inmate’s motion for a preliminary injunction against the enforcement of a DOC rule prohibiting inmates from carrying on a business or profession. The Court of Appeals concluded that “it is likely that Jamal can demonstrate that the Department’s enforcement of the business or profession rule against him was motivated, at least in part, by the content of his articles and mounting public pressure to do something about them, and hence, the actions were not content neutral as required by Turner and Pell.” Abu-Jamal, 154 F.3d at 134 (citations omitted).

showing might be unimpressive if . . . submitted as justification for governmental restriction of personal communication among members of the general public.” Id. at 134, quoting Jones v. North Carolina Prisoners’ Labor Union, Inc., 433 U.S. 119, 133 n. 9 (1977).

While I conclude that defendants are correct in stating that plaintiff has no constitutional right to provide legal services to other inmates, that fact does not foreclose plaintiff from alleging a valid claim for retaliation. An inmate has no constitutionally protected right to act as a jailhouse lawyer. Tighe v. Wall, 100 F.3d 41, 42-43 (5th Cir.1996); Williams v. Nix, 1 F.3d 712, 716 (8th Cir. 1993); Gibbs v. Hopkins, 10 F.3d 373, 378 (6th Cir. 1993); Smith v. Maschner, 899 F.2d 267, 940, 950 (10th Cir. 1990). But see Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985).⁵ However, allegations that prison officials retaliated against an inmate for acting as a jailhouse lawyer represent a separate and distinct issue. See Higgason v. Farley, 83 F.3d 807, 810 (7th Cir.1996) (“If a prisoner is transferred for exercising his own right of access to the courts, or for assisting others in exercising their right of access, he has a claim under § 1983.”); Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (“To succeed on his retaliation claim,[plaintiff] need not establish an independent constitutional interest in either assignment to a given prison or placement in a single cell, because the crux of his claim is that state officials violated his First Amendment rights by retaliating against him for his protected speech activities.”) “Assuming, as I must when analyzing a motion to dismiss, that plaintiff’s allegations are true, defendants have punished him because of the expressive content of his lawyering activities. Put more simply, defendants retaliated because they did not care for either the nature of

⁵ I do note that some lawyering activity is undoubtedly protected by the First Amendment. See In re Primus, 436 U.S. 412, 426-32 (1978); NAACP v. Button, 371 U.S. 415, 429-430 (1963) (“In the context of the NAACP objectives, litigation . . . is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression.”)

the litigation or the type of litigant being assisted by plaintiff. Such retaliatory conduct would, if proven, constitute an impermissible, content-based restriction upon an inmate's freedom of speech. Since I cannot conclude that plaintiff would not be entitled to relief under any set of facts consistent with these allegations, I will deny defendants' motion to dismiss Count II.

Plaintiff asserts in Count III of his amended complaint a claim under § 1985(3) alleging that defendants conspired together to deprive him of his First Amendment rights. To state a claim under § 1985(3), a plaintiff must allege: "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." United Brotherhood of Carpenters & Joiners of America, Local 610 v. Scott, 463 U.S. 825, 828-29 (1983), citing Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971). In addition, the second element to such a claim requires "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." United Brotherhood, 463 U.S. at 829, quoting Griffin, 403 U.S. at 102. See also Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997); Bowman v. City of Franklin, 980 F.2d 1104, 1109 (7th Cir. 1992). Here, plaintiff asserts that he "is a member of the class of persons known as 'jailhouse lawyers'". Am. Compl. ¶63. "Jailhouse lawyers", however, are not a class contemplated or protected by § 1985(3). See Lake, 112 F.3d at 687 (holding that where discrimination is based on such immutable characteristics as race, gender, or disability, "we are convinced that the discrimination is invidious and that the reach of § 1985(3) is sufficiently elastic that the scope of its protection may be extended."). Accordingly, Count III will be dismissed.

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ORDER

AND NOW this day of July, 1999, upon consideration of defendants' motion to dismiss the amended complaint and plaintiff's response thereto, it is hereby ORDERED that the motion is GRANTED IN PART and DENIED IN PART:

- (1) Counts I and III are DISMISSED;
- (2) all claims for injunctive and declaratory relief are DISMISSED AS MOOT; and
- (3) all claims against the Commonwealth of Pennsylvania, the Department of Corrections, and the State Correctional Institution at Mahanoy are DISMISSED.

