

detainee at the Northampton County Prison.² Beginning in May, 2001, Plaintiff suffered from a severe tooth pain stemming from a cracked molar which became infected. He requested dental care from Prime Care and Dentrust Dental Services, which operate the prison's medical and dental departments, respectively. In June 2001, the dentist, Dr. Kerr, took an x-ray of Plaintiff's tooth and prescribed antibiotics, he did not prescribe pain medication. Plaintiff made several subsequent attempts to obtain medical and dental care and pain medication by putting in medical and dental request slips. He was not seen for medical or dental care, or given pain medication, in response to his slips. Dr. Shah is responsible for prescribing pain medication in response to Plaintiff's requests, but did not do so. Plaintiff alternately alleges that he did not receive treatment or pain medication because he could not pay the co-pay to see the doctor or dentist, because of prison overcrowding, or in retaliation for other § 1983 suits he has filed against prison officials. Plaintiff also alleges that he was not given needed pain medication because Dr. Shah was concerned about causing Plaintiff liver damage.

On August 31, 2001, Plaintiff was seen by Dr. Kerr for the second time. Todd Haskins, a nurse with the medical department, informed Plaintiff that he had not previously received

²Plaintiff has been released since the filing of his Amended Complaint.

follow up care from the dentist because the Prison does not have a dentist on call. Mr. Haskins also informed Plaintiff that the prison medical department does not give out pain medication for tooth pain, that medication has to be obtained from the dental department. Dr. Kerr took an x-ray of a new cavity and informed Plaintiff that he needed a root canal because of the delay in treatment of his first cavity. Dr. Kerr also told Plaintiff that he could not perform the root canal. Plaintiff requested a root canal from the prison, and filed a grievance over the failure of prison officials to either provide him with a root canal or allow him to see an outside dentist for a root canal. Defendant Haskins replied to Plaintiff's grievance by referring him back to Dr. Kerr and did not make any arrangements for Plaintiff to obtain a root canal. Plaintiff still had not obtained a root canal by the time the Amended Complaint was filed and continued to suffer severe tooth pain without pain medication.

The Amended Complaint also alleges that the prison does not have an adequate grievance process (although Plaintiff filed a grievance with respect to his dental treatment) and that the prison commissary only carries toothbrushes which are too small and have hard bristles and toothpaste which is not approved by the ADA. The Amended Complaint alleges claims against Prime Care, Dentrust Dental Services, Dr. Kerr, Todd Haskins, Dr. Shah, Warden Buskirk and Deputy Warden Hoke for violation of Plaintiff's constitutional

rights by deliberate indifference to his serious dental needs and against the Prison Medical Department for violation of his constitutional rights by deliberate indifference to his need for pain medication.

II. LEGAL STANDARD

When determining a Motion to Dismiss pursuant to Rule 12(b)(6), the court may look only to the facts alleged in the complaint and its attachments. Jordon v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must accept as true all well pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Securities, Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted when a plaintiff cannot prove any set of facts, consistent with the complaint, which would entitle him or her to relief. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. DISCUSSION

A. The Prison Defendants' Motion to Dismiss

The Prison Defendants argue that the Amended Complaint does not allege facts sufficient to state a claim for deliberate indifference to Plaintiff's medical needs and conditions of confinement. Plaintiff alleges that his constitutional rights have been violated by Defendants' failure to provide him with a root canal and pain medication for his severe tooth pain. The Supreme

Court has determined that "failure to provide adequate treatment is a violation of the Eighth Amendment when it results from "deliberate indifference to a prisoner's serious illness or injury." Estelle v. Gamble, 429 U.S. 97, 105 (1976). Pre-trial detainees such as Plaintiff are similarly entitled to adequate medical care pursuant to the Due Process Clause. Kost v. Kozakiewicz, 1 F.3d 176, 188 (3d Cir. 1993). The "Due Process rights of a pretrial detainee are at least as great as the Eighth Amendment protections available to a convicted prisoner." Id. (citation omitted). In order to state a claim that the medical care provided by Defendants violated his constitutional rights, Plaintiff must allege that his medical needs were serious and that prison officials were deliberately indifferent to those needs. Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979). The Supreme Court has held that:

a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer v. Brennan, 511 U.S. 825, 837 (1994). In order to state a claim for deliberate indifference, Plaintiff has to allege more than medical malpractice. Estelle v. Gamble, 429 U.S. at 105 ("a complaint that a physician has been negligent in diagnosing or

treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner."); Parham v. Johnson, 126 F.3d 454, 458 n. 7 (3d Cir. 1997) ("We recognize the well-established law in this and virtually every circuit that actions characterizable as medical malpractice do not rise to the level of 'deliberate indifference' under the Eighth Amendment."). The Court of Appeals for the Third Circuit has recognized that when "prison authorities prevent an inmate from receiving recommended treatment for serious medical needs or deny access to a physician capable of evaluating the need for such treatment, the constitutional standard of Estelle has been violated." Inmates of Allegheny County Jail, 612 F.2d at 762.

The Amended Complaint alleges that Plaintiff had serious medical needs, he suffered from severe tooth pain and was diagnosed by the prison dentist, Dr. Kerr, as needing a root canal. The Amended Complaint also alleges that Defendants were aware of Plaintiff's serious medical condition because he filed many requests for medical and dental care for treatment of his severe pain and root canal. The Amended Complaint further alleges that Defendants allowed him to suffer severe pain for a period of months not for medical reasons, but because it was the policy of the medical department not to prescribe pain medication for persons in

need of dental treatment, and the Prison Defendants would not give Plaintiff the dental care he needed. Accordingly, the Amended Complaint, viewed in the light most favorable to Plaintiff, states a claim against the Prison Defendants for deliberate indifference to Plaintiff's serious medical needs for pain medication and a root canal and, therefore, the Prison Defendants' Motion to Dismiss will be denied with respect to these claims.

The Prison Defendants also argue that Plaintiff's allegations that Northampton County Prison did not provide him with adequate toothbrushes or toothpaste should be dismissed because they are insufficient to state a claim that his conditions of confinement violate his constitutional rights. To the extent that these allegations state a separate claim concerning the conditions of Plaintiff's confinement, Plaintiff must "prove that prison officials acted with deliberate indifference and that he . . . suffered a deprivation of the minimal civilized measure of life's necessities." Kost, 1 F.3d at 188. Accepting Plaintiff's allegations that the Prison Defendants provide toothbrushes which are too small and toothpaste which is not approved by the ADA as true, these allegations do not state a claim upon which relief could be granted that Plaintiff has been deprived of "the minimal civilized measure of life's necessities" or that the Prison Defendants were deliberately indifferent to that deprivation.

Accordingly, the Prison Defendants' Motion to Dismiss will be granted with respect to this claim.

B. Dr. Shah's Motion to Dismiss

Dr. Shah has moved to dismiss Plaintiff's claim against him on the ground that Plaintiff did not file a grievance concerning his medical care and treatment by Dr. Shah prior to filing the Complaint, as required by the Prison Litigation Reform Act. Plaintiff did file one grievance, a copy of which is attached to the Complaint. That grievance concerns only the dentist and Plaintiff's need for a root canal. The grievance does not mention Dr. Shah, medical care provided by Northampton County Prison, or pain medication.

The Prison Litigation Reform Act of 1995, 42 U.S.C.A. § 1997e(a) (West 2001), provides that:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

The term "with respect to prison conditions" means "with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison." 18 U.S.C.A. § 3626(g)(2) (West 2001).

Plaintiff argues that this claim should not be dismissed because Northampton County Prison does not have a meaningful or adequate grievance policy. However, the Pennsylvania Department of Corrections does have a comprehensive grievance system:

The Pennsylvania Department of Corrections has established a Consolidated Inmate Grievance Review System, DC-ADM 804. These procedures permit a prisoner to file, after attempted informal resolution of a problem, a written grievance to the Grievance Coordinator; an appeal from the Coordinator's decision may be made in writing to the Facility Manager; and a final written appeal may be presented to the Chief Hearing Examiner. Prisoners are also provided written dispositions of the grievances and appeals.

Bensinger v. Hollandhull, No. 00-cv-5037, 2001 WL 1622231, at *3 (E.D. Pa. Dec. 18, 2001). Moreover, Defendant has, admittedly, taken advantage of this procedure to file a grievance with respect to the Prison Defendants failure to provide him with a root canal. Plaintiff attached a copy of that grievance, and the written response to that grievance, to the Amended Complaint. Plaintiff is required, by the Prison Litigation Reform Act, to exhaust his administrative remedies prior to filing suit concerning any aspect of his treatment by prison officials, including the prison doctor, even if he would ultimately not be able to obtain the relief he seeks through the grievance process. Booth v. Churner, 532 U.S. 731, ___, 121 S. Ct. 1819, 1824-25 (2001). As the Amended Complaint does not allege that Plaintiff administratively exhausted his claims against Dr. Shah by filing a grievance prior to filing

suit, Dr. Shah's Motion to Dismiss is granted without prejudice.³

An appropriate Order follows.

³The Court notes that Defendants Prime Care Medical Company, Dentrust Dental Services, Todd Haskins and Dr. John Kerr have not been served with the Amended Complaint. It also appears that Plaintiff did not exhaust his administrative remedies with respect to his claims against these Defendants, thereby making his claims against them vulnerable for the same reasons that apply to his claim against Dr. Shah.

notify the Court, the action against those Defendants
will be dismissed.

BY THE COURT:

John R. Padova, J.