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

THOMAS THORPE,	**:**	**CIVIL ACTION**
Plaintiff,	**:**	
	:	
v.	**:**	
	:	**NO. 04-CV-1099**
THOMAS DOHMAN, Cpt.,	**:**	
GERALD SOBOTOR, Unit Mgr.,	**:**	
MICHAEL LORENZO, Deputy	**:**	
Defendants.	**:**	

Diamond, J.

Memorandum

State prisoner Thomas Thorpe brings this action *pro se*, alleging that prison officials Thomas Dohman, Gerald Sobotor, and Michael Lorenzo violated his Eighth and Fourteenth Amendment rights when, following his transfer to administrative segregation, they did not provide him with an administrative hearing for 15 days. Plaintiff also claims that Defendant Dohman falsified documents to justify Plaintiff's placement in administrative segregation. Defendants have moved to dismiss. I grant Defendants' Motion.

STANDARD OF REVIEW

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. LaFate v. Hosp. Billing & Collections Serv. Ltd., No. 03-985, 2004 U.S. Dist. LEXIS 17592, *2 (E.D. Pa. Sept. 1, 2004) (citing Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)). In considering a Rule 12(b)(6) motion, a Court is required to accept all well-pleaded allegations in the complaint as true, and view these allegations

in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989) (citations omitted); Nesbit v. Gears Unlimited, Inc., 347 F.3d 72, 77 (3d Cir. 2003). Dismissal is warranted only if the plaintiff cannot obtain relief under any set of facts that could be established. Ramadan v. Chase Manhattan Corp., 229 F.3d 194, 195 (3d Cir. 2000) (citing Alexander v. Whitman, 114 F.3d 1392, 1397-98 (3d. Cir. 1997)).

As a general matter, a district court may not consider documents outside the pleadings when ruling on a motion to dismiss. In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997). The Third Circuit has recognized an exception, however, for documents "integral to or explicitly relied upon in the complaint." In re Rockefeller Ctr. Props. Sec. Litig., 184 F.3d 280, 292-293 (3d Cir. 1999) (citing In re Burlington Coat Factory Sec. Litig., 114 F.3d at 1426 (quotations omitted)). Thus, a Court may consider such documents without converting a dismissal motion into one for summary judgment. In re Rockefeller Ctr. Props. Sec. Litig., 184 F.3d at 292-293; Rogan v. Giant Eagle, Inc., 113 F. Supp. 2d 777, 781-782 (W.D. Pa. 2000); In re Wellbutrin/Zyban Antitrust Litig., 281 F. Supp. 2d 751, 755 (E.D. Pa. July 25, 2003).

Courts are obligated to construe *pro se* pleadings liberally to ensure that *pro se* litigants are afforded proper deference. Castro v. Chesney, No. 97-4983, 1998 U.S. Dist. LEXIS 17278, *26 (E.D. Pa. Nov. 3, 1998) (citing Haines v. Kerner, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972)); Lancaster County Office of Aging v. Schoener, No. 02-7248, 2003 U.S. Dist. LEXIS 1342, *3, n2. (E.D. Pa. Jan. 13, 2003) (citations omitted); see also United States ex rel. Turner v. Rundle, 438 F.2d 839, 845 (3d Cir. 1971) (*pro se* petitions may be inartfully drawn and should be read "with a measure of tolerance") (citations omitted). "[*P*]*ro se* plaintiffs . . . are entitled to even greater deference when the sufficiency of their pleadings are called into

question." Boone v. Chesney, No. 94-3293, 1994 U.S. Dist. LEXIS 12339, at *1 (E.D. Pa. Sept. 2, 1994) (citing Haines; Hughes v. Rowe, 449 U.S. 5, 101 S. Ct. 173, 66 L. Ed. 2d 163 (1980)). A court may dismiss a *pro se* complaint under Rule 12(b)(6) only when it "appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McDowell v. Del. State Police, 88 F.3d 188, 189 (3d Cir. 1996) (quoting Haines, at 520). "On the other hand, a judge may not become a surrogate attorney for the party, even one who is proceeding *pro se*." Taylor v. Diznoff, 633 F. Supp. 640, 641 (W.D. Pa. 1986) (quoting Mazur v. Pa. Dept. of Transp., 507 F. Supp. 3, 5 (E.D. Pa. 1980), aff'd 649 F.2d 860 (3d Cir. 1981)).

THE COMPLAINT IN THIS CASE

Thus far, Plaintiff has filed a Complaint, a Motion for Leave to File an Amended Complaint, and an Amended Complaint in this matter. In addition, he has responded to Defendants' dismissal motion, and submitted a supporting memorandum of law. To afford Plaintiff every opportunity to plead his case, I have combined the factual and legal allegations in all these documents so that, together, they constitute Plaintiff's Complaint for purposes of evaluating Defendants' dismissal motion.

PROCEDURAL HISTORY

Plaintiff is incarcerated in the Pennsylvania State Correctional Institutional at Graterford. On March 18, 2003, Graterford official Dohman ordered Plaintiff removed from Graterford's general inmate population and placed in the Restricted Housing Unit on Administrative Custody Status. (Am. Compl. § 2). Plaintiff did not receive a hearing regarding this placement until April 1, 2003. (Compl. at 2). The Complaint does not disclose the results of that hearing. Plaintiff now sues pursuant to 42 U.S.C. § 1983, charging that the 15 day delay until he received

his hearing violated his due process rights. (Am. Compl. ¶¶ 10-12). Plaintiff also alleges that Dohman falsified state documents to create a pretext for placing Plaintiff in administrative segregation, thus again violating his due process rights. (Am. Compl. ¶ 10). Finally, Plaintiff claims that his placement in administrative segregation violated the Eighth Amendment's prohibition against cruel and unusual punishment. (Am. Compl. ¶ 10).

DISCUSSION

To state a claim under § 1983, the conduct at issue must have: (1) been committed by a person acting under color of state law; and (2) deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. Nicholson v. Snyder, No. 00-588, 2001 U.S. Dist. LEXIS 12859, *10 (D. Del. Aug. 10, 2001); see Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir. 1993) (citing Parratt v. Taylor, 451 U.S. 527, 535, 68 L. Ed. 2d 420, 101 S. Ct. 1908 (1981), overruled on other grounds, Daniels v. Williams, 474 U.S. 327, 88 L. Ed. 2d 662, 196 S. Ct. 662 (1986)). Construing Plaintiff's Complaint as generously as I can, it is apparent that he has failed to state a claim under § 1983.

The "Delayed" Hearing

Plaintiff, citing applicable prison regulations, charges that Dohman and Defendants Sobotor and Lorenzo -- who are also Graterford officials -- violated his due process rights when they placed him in the Restricted Housing Unit and did not afford him a hearing for 15 days. (Am. Compl. at ¶ 12). Plaintiff's entitlement to a hearing is determined by whether or not he has a "liberty interest" in remaining in Graterford's general inmate population. Sandin v. Conner, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). Such an interest exists only when a prison disciplinary measure "imposes atypical and significant hardship on the inmate in relation

to the ordinary incidents of prison life." Id. at 484.

In Griffin v. Vaughn, the Third Circuit applied Sandin to the placement of a Graterford prisoner in administrative detention for 15 months. Griffin v. Vaughn, 112 F.3d 703, 705 (3d Cir. 1997). The Court interpreted Sandin's "atypical and significant hardship" standard as "what a sentenced inmate may reasonably expect to encounter as a result of his or her conviction in accordance with due process of law." Griffin, 112 F.3d at 706. Accordingly, the Court examined the regulations governing Graterford's general inmate population, and then focused on additional restrictions placed upon inmates in administrative custody -- the same regulations Plaintiff invokes here. See Sandin, 112 F.3d at 706-709. The Griffin Court concluded that "in the penal system to which Griffin was committed with due process of law, it is not extraordinary for inmates in a myriad of circumstances to find themselves exposed to the conditions to which Griffin was subjected." Griffin, 112 F.3d at 708. As a result, "exposure to the conditions of administrative custody for periods as long as 15 months falls within the expected parameters of the sentence imposed . . . by a court of law," and therefore does not implicate a liberty interest. Griffin, 112 F.3d at 708 (quotations omitted).

In Mitchell v. Horn, an inmate placed in disciplinary custody alleged a violation of his procedural due process rights because of inadequate time to confer with his assistant-advisor before his hearing, denial of an opportunity to review the evidence against him, and an unfairly conducted disciplinary hearing. 318 F.3d 523, 531 (3d Cir. 2003). The Mitchell Court, like the Griffin Court, "carefully compared the circumstances of the prisoner's confinement with those of other inmates." Id. In conducting this "fact-specific" test, the Mitchell Court compared "the duration of the disciplinary confinement in relation to other prison conditions." Id. at 532; see

Shoats v. Horn, 213 F.3d 140, 144 (3d Cir. 2000).

Applying this controlling authority, I conclude that the 15 day delay in affording Plaintiff an administrative hearing did not violate due process. As discussed earlier, I may consider documents integral to or relied on in the Complaint without converting Defendants' Motion to Dismiss into one for Summary Judgment. In re Rockefeller Ctr. Props. Sec. Litig., 184 F.3d at 292-293 (citations omitted); see also Hodges v. Klein, 421 F. Supp. 1224, 1233 (D.N.J. 1976) (the court may take judicial notice of prison regulations). Accordingly, I have considered the same regulations relied upon by Plaintiff -- DC-ADM 802 (Administrative Custody Procedures) -- and other applicable prison regulations to compare the restrictions experienced by Plaintiff with those experienced by Graterford's general population inmates. Compare DC-ADM 802, 4-4249, "AC Housing Status" at 8-9; Inmate Handbook (2003). That comparison convinces me that Plaintiff's liberty interests have not been compromised.

Significantly, the administrative regulations applicable in Griffin are essentially identical to those at issue here. See Griffin, 112 F.3d at 706-707; DC-ADM 802, 4-4249, "AC Housing Status" at 8-9. Accordingly, the plaintiff in Griffin experienced the same change in conditions as Plaintiff when he was transferred from Graterford's general inmate population to administrative custody. The Griffin Court held that this transfer to administrative custody without a hearing for 15 months did not implicate a liberty interest. Here, under essentially identical prison regulations, Plaintiff challenges confinement in administrative custody without a hearing for only 15 days. (Compl. at 2) That challenge is without merit. See also Whittington v. Vaughn, 289 F. Supp. 2d 621, 626 (E.D. Pa. 2003) ("the courts of this circuit have repeatedly held that temporary transfer to SCI Graterford's RHU, whether for administrative or disciplinary reasons, does not

impose [atypical and significant] hardship"); Johnston v. Vaughn, No. 00-1844, 2000 U.S. Dist. LEXIS 16447 (E.D. Pa. Nov. 13, 2000).

Alleged Falsification of Documents

Plaintiff next claims that Defendant Dohman falsified documents to justify Plaintiff's placement in administrative segregation. (Am. Compl. ¶ 10). Plaintiff does not specify which documents were falsified. Rather, he suggests that because his placement in RHU was unjustified, all documents relating to his confinement necessarily must be false. (Pl. Memorandum of Law at 5). These allegations do not state a due process violation.

The Third Circuit has held that "due process is satisfied where an inmate is afforded an opportunity to be heard and to defend against the allegedly falsified evidence and groundless misconduct reports." Smith v. Mensinger, 293 F.3d 641, 653-654 (3d Cir. 2002) (citing Freeman v. Rideout, 808 F.2d 949 (2d Cir. 1986)). As in Smith, Plaintiff received a hearing during which he had the opportunity to confront and challenge any allegedly falsified documents. See Smith, 293 F.3d at 654. This satisfied Plaintiff's due process rights.

Eighth Amendment

Finally, Plaintiff alleges that his placement in administrative segregation violated his Eighth Amendment rights. (Am. Compl. ¶ 10).

The Supreme Court has held that the Eighth Amendment requires prison officials to maintain "humane conditions for prisoners" through ensuring that "inmates are provided with adequate food, clothing, shelter, and medical care." Id. at 832 (citing DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189, 198-199, 103 L. Ed. 2d 249, 109 S. Ct. 998 (1989)); Rice v. Sobitor, No. 03-5178, 2004 U.S. Dist. LEXIS 2902, *8-9 (E.D. Pa. Jan. 16, 2004). To

make out a claim based on the conditions of his confinement, the inmate must allege:

> (1) the alleged deprivation was "sufficiently serious" that it resulted in "the denial of 'the minimal civilized measure of life's necessities;'" and
>
> (2) the state officials' actions constituted "deliberate indifference" to the inmate's conditions.

Rice, at *9 (citing Farmer, 511 U.S. at 834; Wilson v. Seiter, 501 U.S. 294, 297, 115 L. Ed. 2d 271, 111 S. Ct. 2321 (1991)). "Extreme deprivations are required to make out a conditions-of-confinement claim [and] . . . routine discomfort is part of the penalty that criminal offenders pay for their offenses against society." Hudson v. McMillan, 503 U.S. 1, 9, 117 L. Ed. 2d 156, 112 S. Ct. 995 (1992) (citing Rhodes v. Chapman, 452 U.S. 337, 346, 69 L. Ed. 2d 59, 101 S. Ct. 2392 (1981)).

Here, Plaintiff has not alleged that he was deprived of food, clothing, shelter, or medical care. Nor has Plaintiff alleged facts that could constitute a "denial of the minimal civilized measure of life's necessities." In these circumstances, Plaintiff has failed to state a valid Eighth Amendment claim.

In light of my decision to dismiss I need not address the other grounds Defendants advance for dismissal of this case.

The Motion to Dismiss is **GRANTED**.

An appropriate Order follows.

_____ _____

Date **Paul S. Diamond, J.**

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

THOMAS THORPE,	**:**	**CIVIL ACTION**
Plaintiff,	**:**	
	:	
v.	**:**	
	:	**NO. 04-CV-1099**
THOMAS DOHMAN, Cpt.,	**:**	
GERALD SOBOTOR, Unit Mgr.,	**:**	
MICHAEL LORENZO, Deputy	**:**	
Defendants.	**:**	

Order

AND NOW, this 22nd day of October, 2004, upon consideration of Defendants' Motion to Dismiss and Plaintiff's response, it is **ORDERED** that Defendants' Motion is **GRANTED**.

The Clerk of Court shall close this matter for statistical purposes.

BY THE COURT:

_____

Paul S. Diamond, J.