

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

GREGORY L. HUGHES,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
GUY SMITH et al.,	:	
	:	
Defendants	:	NO. 03-CV-5035
	:	

MEMORANDUM

Plaintiff Gregory Hughes, formerly an inmate at the Graterford State Correctional Institution (“Graterford”), initiated this suit pursuant to 42 U.S.C. § 1983, alleging numerous civil rights violations against officers at Graterford. He sues each defendant in their individual capacities only. Specifically, he claims that Defendants Smith, Brumfield, Hatcher, Crawford, Marsh, Soler, Knauer, Alexy, Zeidenburg, Polo, Tomlinson, Dombrowski, Heller, and Opalka conspired to and did violate his First, Fourth, Eighth, and Fourteenth Amendment rights. He is seeking compensatory and punitive damages, as well as declaratory relief. Defendants filed a motion to dismiss on each of these claims and moved for a more definite statement with respect to Mr. Hughes’ Eighth Amendment claim of deprivation of adequate exercise. For the reasons set forth below, Defendants’ Motion to Dismiss is granted in part and denied in part.

I. BACKGROUND

For purposes of ruling on this Motion to Dismiss, I must accept all facts set forth in Plaintiff’s complaint as true. Plaintiff alleges the following:

On September 17, 2001, Graterford Corrections Officer Polo grabbed Mr. Hughes

testicles and penis during a “frisk pat-search.” Complaint at 3. He reported the incident to Officer Polo’s supervisor, Sgt. Zeidenberg, but Sgt. Zeidenberg refused to address his complaint. Id. Officer Polo told Mr. Hughes that “no one would believe [him] anyway,” and issued a false misconduct report in order to “cover up his actions.” Id. Hughes then filed a formal grievance with Lt. Crawford, but Crawford refused to investigate the incident. Id. In December 2001, Hughes began receiving threats from several corrections officers, and on January 2, 2002, Officer Tomlinson specifically told him, “Not only I will get you, but there’s [sic] five other officers out to get you.” Id. at 4. On January 20, 2002, Lt. Knauer interviewed him about the alleged sexual assault. Id. at 3. Hughes indicated to Lt. Knauer that he did not intend to pursue charges against Officer Polo, but simply wished not to have any further contact with him. Id. Nevertheless, Lt. Knauer “conspired” to cover it up. Id.

On January 30, 2002, Officer Tomlinson attempted to serve Hughes a food tray, which Hughes refused to accept. Id. at 4. Hughes requested Officer Tomlinson to summon a supervisor so he could “receive a proper food tray,” but Tomlinson tried to force the tray through the wicket door and it dropped to the floor. Id. Tomlinson then slammed a wicket door on Hughes’ fingers, causing severe pain and swelling in his right hand and requiring medical attention. Id. Hughes reported the incident to Sgt. Alexy and Lt. Crawford, but they once again failed to investigate his complaints and planned to “cover up” the alleged assault. Id. Officer Tomlinson filed a misconduct report against Hughes. Id.

Captain Brumfield placed Hughes on a modified diet without proper medical authorization in retaliation for his complaints. Id. In February 2002, Mr. Hughes was taken to the infirmary because he was suffering from stomach cramps and pain from a “pre-illness serious

medical condition.” Id. at 5. Lt. Crawford ordered that the doctor return him to segregation without providing medical treatment, and in conjunction with Sgt. Alexy deprived him of adequate meals and medical treatment for seventeen days. Id. Hughes filed a grievance against these officers, but Grievance Coordinator, Leslie Hatcher, refused to process those grievances. Id.

On May 4, 2002, Officer Zeidenberg threatened Mr. Hughes and ransacked his cell, removing legal papers and personal hygiene items. Id. When Hughes tried to report the incident to Lt. Marsh, Marsh refused to see him. Id. Later that afternoon, Officer Zeidenberg snatched a legal paper out of Mr. Hughes’ hands and tore it to pieces. Id. Zeidenberg then summoned several other guards, including Officer Dombrowski, and they forced their way into Hughes’ cell and began to beat him. Id. at 6. Lt. Marsh stood by watching the assault. Id. Hughes was placed in a segregation unit and Officer Zeidenberg filed a falsified misconduct report in an attempt to “cover-up” the assault. Id. In the segregation unit, Mr. Hughes was deprived of adequate bedding and water for an eight day period. Id.

Beginning in August 2002, Officer Heller and Lt. Opalka denied Hughes access to the exercise yard. Id. at 7. He filed a grievance, which was under investigation at the time he filed his complaint. Id.

II. DISCUSSION

Based on his version of the facts, Mr. Hughes alleges that various corrections officers listed in the complaint conspired to and did violate his First, Fourth, Eighth, and Fourteenth Amendment Rights. Defendants filed a partial motion to dismiss, arguing that any claims for violations that occurred before December 8, 2001 are time barred, that the complaint against

Captain Smith should be dismissed in its entirety, that a more definite statement is necessary with respect to his inadequate exercise claim, and that Hughes has failed to state a claim on which relief can be granted on all other claims.

A. Standard for a Motion to Dismiss

The court may grant a motion to dismiss only where “it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In deciding a motion to dismiss, the court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Id.; see also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984). The court must construe pleadings submitted by a pro se inmate litigant by a more liberal standard. Haines v. Kerner, 404 U.S. 519, 521 (1972); see also Duke v. United States, 305 F. Supp. 2d 478 (E.D. Pa. 2004).

B. Defendants’ Motion to Dismiss Plaintiff’s Claim Against Captain Smith

To establish a claim pursuant to 42 U.S.C. 1983, a plaintiff must prove that (1) the complained of conduct was committed by a person acting under color of state law, and (2) such conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or federal law. Piecknick v. Pennsylvania, 36 F.3d 1250, 1255-56 (3d Cir. 1994). Because respondeat superior liability does not apply to actions under Section 1983, Monell v. New York City Dep’t of Social Serv., 436 U.S. 658, 691 (1978), a plaintiff must allege that an individual defendant was directly involved in, directed, or had actual knowledge and acquiesced in the constitutional violations. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).

Plaintiff has named Captain Smith as a party in this suit, but has not included him in the text of the Complaint. Attached to Plaintiff's complaint, however, is a document entitled "Personal Involvement of the Parties," in which Plaintiff states that Smith "active[ly] participat[ed] and conspiratorially planned to 'cover-up' the alleged assault by Officer Tomlinson, and failed to intervene as to the deprivation of adequate food, and to investigate the retaliation by the segregation officers." In light of the liberal pleading standard for pro se inmate litigants, I find this sufficient to put Defendant Smith on notice of the allegations against him and I will deny his motion to dismiss.

2. Defendants' Motion to Dismiss Plaintiff's Fourth Amendment Claim

Plaintiff alleges that Officer Zeidenberg has ransacked his cell in violation of the Fourth Amendment. The Supreme Court has held that a prison inmate does not have a legitimate expectation of privacy in his prison cell, and that the Fourth Amendment proscription against unreasonable searches and seizures does not apply in the prison context. See Hudson v. Palmer, 468 U.S. 517 (1984). "Moreover, the Fourth Amendment does not protect against seizures, or even destruction, of an inmate's property." Blackwell v. Vaughn, 2001 U.S. Dist. LEXIS 10893, at *10 (E.D. Pa. 2001) (citing Hudson, 468 U.S. at 528 n.8). Therefore, Plaintiff fails to state a claim on which relief can be granted, and Fourth Amendment claim is dismissed.

3. Defendant's Motion to Dismiss Plaintiff's Eighth Amendment Claims

Plaintiff also alleges that prison officials violated his Eighth Amendment rights by physically and sexually assaulting him, depriving him of medical care, amenities, bedding, and water, providing inadequate conditions of confinement, and issuing false misconduct charges. To establish a violation of the Eighth Amendment's ban against cruel and unusual punishment,

the plaintiff must allege an injury or deprivation that is “sufficiently serious” and that prison officials inflicted the injury with a “sufficiently culpable” state of mind. Griffin v. Vaughn, 112 F.3d 703, 709 (3d Cir. 1997) (citations omitted); Blackwell, 2001 U.S. Dist. LEXIS, at *11 (citing Farmer v. Brennan, 511 U.S. 825, 834 (1994)).

a. Sexual Assault

Plaintiff’s claim against Officer Polo for sexual assault is barred by the statute of limitations. Pennsylvania’s two year statute of limitations on personal injury actions, 42 Pa. Cons. Stat. Ann. § 5524(2), applies to actions brought pursuant to Section 1983. Samerica Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998) (citations omitted). Because the alleged assault occurred on September 17, 2001 and Plaintiff did not file this complaint until December 8, 2003, Plaintiff’s sexual assault claim is hereby dismissed.

b. Excessive Force

Plaintiff also contends that he was verbally threatened by Zeidenberg and Tomlinson and physically assaulted by Zeidenberg, Tomlinson, and Dombrowski. As a general rule, verbal harassment is insufficient to state a constitutional claim under Section 1983. McClellan v. Secor, 876 F.Supp. 695, 698 (E.D. Pa. 1995). However, a plaintiff may state a claim for excessive force under the Eighth Amendment. In evaluating such a claim, “the subjective inquiry is whether the official acted in “a good-faith effort to maintain or restore discipline or maliciously and sadistically to cause harm.” Collins v. Klotz, 1994 U.S. Dist. LEXIS 8980, at *10-11 (E.D. Pa. 1994). The court must consider “(1) the extent of plaintiff’s injuries; (2) the need for application of force; (3) the correlation between that need and the force used; (4) the threat reasonably perceived by the Defendant; [and] (5) any efforts made by the defendant to temper the severity of

a forceful response.” Id. In this case, Plaintiff has alleged Officer Tomlinson, “with malicious intent[,] slammed the wicket door on [his] hands” and severely cut his hands and fingers, requiring medical attention. He also alleges that at the command of Sgt. Zeidenburg, a control booth operator “maliciously” assaulted him in conjunction with several other officers, including Officer Dombrowski, and that he had “serious injuries” as a result of the attack. Given the liberal pleading standard for prison inmates, this is sufficient to withstand the motion to dismiss.

c. Denial of Medical Care and Other Necessities

In addition to the physical abuse, plaintiff contends that Graterford officers deprived him of adequate food, water, and bedding and denied him necessary medical care. Under the Eighth Amendment, “prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and ‘must take reasonable measures to guarantee the safety of the inmates.’” Farmer v. Brennan, 511 U.S. 825, 832 (1994) (citations omitted). To succeed on a claim for failure to provide medical care, “a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” Here, Plaintiff claims that he was suffering “stomach cramps and pain due to my pre-illness serious medical condition” and that Lt. Crawford and Sgt. Alexy ordered that he be returned to segregation without receiving treatment. He also claims that he was deprived of water for eight days. Without evaluating the underlying merits of the claim, but noting the deference traditionally afforded to pro se plaintiffs, I find that the Plaintiff has pleaded sufficient facts to withstand Defendant’s Motion to Dismiss his claim for denial of medical care and other necessities.

d. Lack of Adequate Exercise

With respect to Plaintiff’s claim that he was denied adequate exercise by Officers Heller

and Opalka, Defendants seek a more definite statement pursuant to Federal Rule of Civil Procedure 12(e). Rule 12(e) provides: “If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement.” Rule 12(e) motions, however, “are highly disfavored since ‘the overall scheme of the federal rules calls for relatively skeletal pleadings and places the burden of unearthing factual details on the discovery process.’” CH&H Pa. Props., Inc. v. Heffernan, 2003 U.S. Dist. LEXIS 14736 (E.D. Pa. 2003) (citations omitted). The basis for granting a 12(e) motion is “unintelligibility, not lack of detail.” Defendants contend that Plaintiff has failed to describe what exercise he did or did not receive, or how much exercise is adequate. Plaintiff’s claim, however, is not unintelligible, and therefore, the motion for a more definite statement is denied.

4. Defendants’ Motion to Dismiss Plaintiff’s First Amendment Retaliation Claim

Plaintiff has alleged that the negative treatment he received from prison officials was the result of his decision to file grievances. In order to prove a retaliation claim, the plaintiff must establish that (1) he engaged in a constitutionally protected activity, (2) state actors retaliated by way of taking adverse action, and (3) the protected activity caused that retaliation. Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977). The First Amendment protects a prisoner’s right to file a grievance report against a prison official. Harris v. Terhune, 2002 U.S. App. LEXIS 6795, at *4 (3d Cir. Apr. 11, 2002). Plaintiff has claimed that he filed grievances and that he suffered adverse action by prison officials. Defendants argue that Plaintiff has failed to specifically allege “what constitutional activity he was engaging in” that spurred the

retaliation. However, giving the deference traditionally afforded to a pro se complaint, it is fair to infer that Plaintiff alleges retaliation based upon his decision to file grievances, an act protected by the First Amendment. Therefore, Defendant's Motion to Dismiss the Plaintiff's retaliation claim is denied.

5. Defendants' Motion to Dismiss Plaintiff's Fourteenth Amendment Claim for Failure to Respond to Grievances

Plaintiff's Fourteenth Amendment claim based on the prison's failure to respond or refusal to process formal grievances fails to state a claim on which relief can be granted. "The failure of a prison official to act favorably on an inmate's grievance is not itself a constitutional violation." Caldwell v. Hall, 2000 U.S. Dist. LEXIS 4022, at *5 (E.D. Pa. March 31, 2000) (citations omitted). Moreover, a prisoner has no constitutional right to require prison officials to investigate his grievances. Davage v. United States, 1997 U.S. Dist. LEXIS 4844, at *9 (E.D. Pa. Apr. 11, 1997). Therefore, to the extent that Plaintiff's claim is based on prison officials failure to process grievances, it is dismissed.

6. Defendants' Motion to Dismiss Plaintiff's Conspiracy Claim

To support a claim for conspiracy under Section 1983, Plaintiff must show "(1) the existence of a conspiracy involving state action and (2) deprivation of civil rights in furtherance of such conspiracy by each party to the conspiracy." Marchese v. Umstead, 110 F. Supp. 2d 361, 370 (E.D. Pa. 2000). With respect to the first prong, "[t]o sufficiently allege a conspiracy, a plaintiff must show 'a combination of two or more persons to do a criminal act, or to do a lawful act by unlawful means or for an unlawful purpose.'" Panayotides v. Rabenold, 35 F. Supp. 2d 411, 419 (E.D. Pa. 1999). However, there can be no liability for a conspiracy to violate Section 1983 without an actual violation. Holt Cargo Sys., Inc. v. Delaware River Port Auth., 20 F.

Supp. 2d 803, 843 (E.D. Pa. 1998). Although certainly lacking in clarity, Plaintiff's complaint has stated facts sufficient to support a claim for the deprivation of his constitutional rights and has pleaded facts to place the defendants on notice of the time frame of the alleged conspiracy and actions by each of the defendants in furtherance of the alleged conspiracy. Therefore, given the liberal pleading standard for pro se inmate litigants, I find that Plaintiff has sufficiently pleaded a conspiracy claim.

IV. CONCLUSION

For the foregoing reasons, I will grant Defendants' Motion to Dismiss as to Plaintiff's Fourth Amendment claim, Plaintiff's Eighth Amendment claim based upon the alleged sexual assault, and Plaintiff's Fourteenth Amendment claim based on Defendants' alleged failure to respond to grievances. Defendants' Motion to Dismiss all other claims and Defendants' Motion for a More Definite Statement is denied.

An appropriate order follows.

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GREGORY L. HUGHES,	:	
	:	
Plaintiff	:	CIVIL ACTION
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v.	:	
	:	
GUY SMITH et al.,	:	
	:	
Defendants	:	NO. 03-CV-5035
	:	

ORDER

AND NOW, this day of February, 2005, upon consideration of Defendants' Partial Motion to Dismiss (Docket No. 14), it is hereby ORDERED that Defendants' Motion is GRANTED IN PART and DENIED IN PART. The Motion is GRANTED as to Plaintiff's Fourth Amendment claim, Plaintiff's Eighth Amendment claim based upon the alleged sexual assault, and Plaintiff's Fourteenth Amendment claim based on Defendants' alleged failure to respond to grievances. Defendants' Motion to Dismiss all other claims and Defendants' Motion for a More Definite Statement are DENIED.

LAWRENCE F. STENGEL, J.