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

CARL ELISAS WHITEHEAD	:	**CIVIL ACTION**
Plaintiff,	:	
	:	
v.	:	
	:	**NO. 04-CV-1853**
JEFFREY BEARD et al.	:	
Defendants.	:	

Diamond, J. **March 30, 2006**

MEMORANDUM

Carl Elisas Whitehead alleges that Pennsylvania prison officials violated his First and Fourteenth Amendment rights when: (1) he was subjected to a cell and strip search shortly after filing a grievance; (2) he was placed in disciplinary custody for his refusal to comply with several orders; and (3) his property was taken and then misplaced. See 42 U.S.C. § 1983; 28 U.S.C. § 1331. In his Third Amended Complaint, Plaintiff names twelve Defendants: Secretary of Corrections Jeffrey Beard, Captain Dennis Brumfield, Hearing Examiner Mary Canino, Lieutenant Raymond Knauer, Corrections Officers Richard Schneider, Starlord Picke[tt], Calvin Har[d]nett, Junius Clayton, and Douglas Kephart, and three John Doe Corrections Officers. See *Third Am. Compl. (Doc. No. 43)*. I grant Defendants' Motion for Summary Judgment.

LEGAL STANDARD

Upon motion of any party, summary judgment is appropriate "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R.

Civ. P. 56(c). The moving party must initially show the absence of any genuine issues of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986). An issue is material only if it could affect the result of the suit under governing law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). In deciding whether to grant summary judgment, I "must view the facts in the light most favorable to the non-moving party" and take every reasonable inference in that party's favor. Hugh v. Butler County Family YMCA, 418 F.3d 265 (3d Cir. 2005). If, after viewing all reasonable inferences in favor of the non-moving party, I determine that there is no genuine issue of material fact, summary judgment is appropriate. See Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987). The opposing party must support each essential element with concrete evidence in the record. See Celotex, 477 U.S. at 322-23. This requirement upholds the "underlying purpose of summary judgment [which] is to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense." Walden v. Saint Gobain Corp., 323 F.Supp. 2d 637, 641 (E.D. Pa. 2004) (restating Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976)).

In describing the background of this case, I have set out those record facts that Plaintiff does not dispute and construed them in the light most favorable to Plaintiff. I have resolved all factual disputes in Plaintiff's favor. Finally, I have disregarded those allegations that Plaintiff makes without any evidentiary support. See Celotex, 477 U.S. at 322-23; Jones v. UPS, 214 F.3d 402, 407 (3d Cir. 2000) (requiring more than "unsupported allegations" to defeat summary judgment).

BACKGROUND

I. Plaintiff's Initial Grievance

Plaintiff is incarcerated in the Pennsylvania State Correctional Institution at Graterford, serving a 35 to 70 year sentence for Rape, Indecent Assault, Corrupting the Morals of a Minor, Endangering the Welfare of a Child, and other crimes relating to the rape of his seven month old daughter. *Def. Exh. 1, "Pl. Jan. 6 Dep.," at 9, 13*. On May 9, 2002, Officers Hardnett and Clayton conducted a random search of Plaintiff's cell and confiscated ten packs of Newport cigarettes. *Id. at 15–16, 21–22; Def. Exh. 10, "Kishbaugh Decl.," Att. at 5–6*. Plaintiff wrote to several staff members demanding the return of the cigarettes, which Plaintiff alleges belonged to his cellmate. *Def. Exh. 14, "Pl. Feb. 2 Dep.," at 12–13*. On May 14, 2002, three different officers searched Plaintiff's cell and, in accordance with DOC procedures, strip searched Plaintiff. *Id. at 11, 16–17; Def. Exh. 9 Att. "Whitehead 8"; Kishbaugh Decl. Att. at 4–7*.

On May 23, 2002, Plaintiff submitted Grievance No. 21413 to Grievance Coordinator Leslie Hatcher, protesting the May 9 and May 14 searches and the confiscation of his cellmate's cigarettes. *Whitehead 8*. Plaintiff admits that he did not provide anyone else with a copy of the Grievance. *Pl. Feb. 2 Dep. at 23*. Lieutenant Kenneth M. Eason initially responded, declining to return the cigarettes and explaining that each cellmate should be responsible for his own possessions. *Def. Exh. 12, "Burks Decl.," Att. B.* There is no evidence that any prison official (other than Hatcher and Eason) was aware of Grievance No. 21413. *Def. Exhs. 15, "Hardnett Decl."; 16, "Clayton Decl."; 17, "Pickett Decl."; 18, "Schneider Decl."; 19, "Kephart Decl."; 20, "Brumfield Decl."; 21, "Canino Decl."* Around August 22, 2002, Plaintiff appealed Eason's decision to Superintendent Vaughn, who determined that the searches and confiscation complied

with all DOC procedures. *Burks Decl. Att. D.* Plaintiff ultimately appealed his grievance to the DOC Office of Inmate Grievances and Appeals. *Id. Att. E.* Chief Grievance Coordinator Thomas James upheld the Superintendant's decision. *Id. Att. F.*

II. Defendants' Alleged Retaliation

On June 5, 2002 (approximately two weeks after Plaintiff submitted Grievance No. 21413 to Hatcher), Corrections Officers Pickett and Schneider informed Plaintiff that they intended to conduct a random search of his cell. *Pl. Jan. 6 Dep. at 26–28; Def. Exh. 9 Att. "Whitehead 4."* Pickett and Schneider also attempted to conduct a strip search of Plaintiff. *Pl. Jan. 6 Dep. at 27; Whitehead 4.* Plaintiff did not comply with their orders, and instead demanded that a lieutenant or higher ranking officer be present for the search. *Pl. Jan. 6 Dep. at 31–32; Whitehead 4.* Pickett and Schneider interpreted this as a refusal, and escorted Plaintiff to the Internal Security Department. *Pl. Jan. 6 Dep. at 31; Whitehead 4.* Lieutenant Knauer there explained to Plaintiff that his conduct constituted a refusal to comply with an order, and that if he was unhappy about an order, he should first comply and then express his complaints through the grievance system. *Def. Exh. 5, "Knauer Dep.," at 16–19.* Plaintiff then submitted to the strip search, which was conducted by two different Corrections Officers in Lieutenant Knauer's presence. *Pl. Jan. 6 Dep. at 35–36.*

By approximately 8:24 a.m., the search was completed and Plaintiff had dressed. *Def. Exh. 6, "Kephart Dep.," at 36, 51–52.* In accordance with DOC policy, because Plaintiff had initially refused to submit to the strip search, Corrections Officer Kephart ordered Plaintiff to produce a urine sample for drug testing. Kephart informed Plaintiff that he had two hours to

produce a one-half cup urine sample. *Id.* Department of Corrections regulations require an inmate to produce a urine sample all at one time. *Id. at 46–47*. An inmate is allowed to drink a limited amount of water during the testing process. *Knauer Dep. at 32–33*. By 10:40 a.m., Plaintiff had not produced the required amount of urine. *Def. Exh. 9 Att. "Whitehead 2."*

Plaintiff received two Misconduct Reports related to this incident: (1) Misconduct No. 412872, Refusing to Obey an Order, issued by Pickett for Plaintiff's refusal to comply with the strip search order at his cell; and (2) Misconduct No. 412858, Refusing to Obey an Order, issued by Kephart for Plaintiff's failure to produce an adequate urine sample within two hours. *Pl. Jan. 6 Dep. at 52–53*. Both Misconducts were approved by Shift Commander Brumfield. *Def. Exh. 4, "Brumfield Dep.," at 19–20*. Brumfield ordered Plaintiff to be placed in the Restricted Housing Unit ("RHU") pending a hearing. *Id. at 23–24*.

On June 11, 2002, Hearing Examiner Canino dismissed both Misconducts without prejudice because neither report specified the date and time they had been served on Plaintiff. *Whitehead 2; Whitehead 4*. On June 12, 2002, Pickett rewrote the Misconduct Report regarding the strip search refusal — Misconduct No. A311875 — and served Plaintiff with the Report. *Id*. Canino held a hearing on this Misconduct on June 13, 2002. *Def. Exh. 7, "Canino Dep.," at 75*. Canino found Plaintiff guilty and sentenced him to ninety days of "Disciplinary Custody" in the RHU. *Id. at 67–70, 73–74; Whitehead 4*.

Kephart rewrote the Misconduct Report regarding Plaintiff's failure to produce a urine sample — Misconduct No. 412863 — and served it on Plaintiff. *Pl. Jan. 6 Dep. at 60; Def. Exh. 9 Att. "Whitehead 5."* During the June 17, 2002 hearing held by Canino, Plaintiff admitted that he had failed to produce a urine sample in the two hours he had been given. *Pl. Jan. 6 Dep. at*

60–61; Canino Dep. at 75–76. Canino found Plaintiff guilty and ordered him to serve ninety additional days in the RHU, for a total of 180 days. *Pl. Jan. 6 Dep. at 60–61; Whitehead 5*. Plaintiff was nonetheless released from RHU after ninety-two days. *Pl. Jan. 6 Dep. at 61–63*.

Plaintiff appealed both Misconducts through each level of the DOC's administrative appeal procedure. *Def. Mot. for Summ. J. Exh. 11, "Bitner Decl.," at ¶¶ 4, 6, 8, 10, 13, Att. A, C, E, G, J.* At every level, Plaintiff's arguments were addressed on the merits, and Canino's rulings were upheld. *Id. at ¶¶ 5, 7, 9, 11, 12, 14, Att. B, D, F, H, I, K.*

III. Plaintiff's Property Loss

While Plaintiff was in disciplinary custody, Navarro Dias — the inmate in the RHU cell adjacent to Plaintiff's — was scheduled for transfer from Graterford to SCI Huntingdon. *Def. Mot. for Summ. J. Exh. 8, "Robinson Dep.," at 28.* The inmate numbers of Plaintiff and Dias were nearly identical: EK5805 (Whitehead) and EK5850 (Dias). It is undisputed that while preparing Dias's transfer paperwork, Sergeant Flaim and Lieutenant Robinson inadvertently transposed a number, making it seem that Plaintiff was to be transferred. *Id. at 28–29.* When Plaintiff learned of the transfer, he packed his property and gave it to the Graterford staff. *Pl. Jan. 6 Dep. at 63–64.* No one discovered the transposition error until Plaintiff's belongings had already been shipped to SCI Huntington. *Robinson Dep. at 29–30.* RHU staff immediately informed the Plaintiff of the error and returned Plaintiff's property to him within one week. *Id. at 30, 40; Pl. Jan. 6 Dep. at 66.* According to Plaintiff, some soap, deodorant, baby powder, and lotion were missing by this time. *Def. Mot. for Summ. J. Exh. 13, "Kriczky Decl.," Att. A.*

On August 6, 2002, Plaintiff filed Grievance No. 26885, complaining of the erroneous

transfer and loss of his property. *Id.* On May 23, 2003, Captain Guy Smith explained how the error had occurred, but declined to replace the property or compensate Plaintiff for its loss. *Id. Att. B.* Plaintiff's appeal to then-Superintendant Donald Vaughn was denied as untimely. *Id. Att. C.* The DOC Office of Inmate Grievances and Appeals denied Plaintiff's further appeal because Plaintiff had failed to attach required documents. *Burks Decl. Att. I.*

Finally, on April 2, 2003, Plaintiff filed Grievance No. 46468, complaining of the delay in the response to Grievance No. 26885. *Id. Att. J.* Plaintiff received an initial response from Grievance Officer Alan LeFebvre, who explained that despite the delay, DOC procedures had been followed with respect to the erroneous transfer and property loss. *Id. Att. K.* Plaintiff appealed this Grievance to the Superintendent, demanding $10,000. *Id. Att. L.* Then-Acting Superintendent David Diguglielmo acknowledged the delay and promised corrective action with the staff, but upheld LeFebvre's decision. *Id. Att. M.* Finally, Plaintiff appealed the Grievance to the DOC Office of Inmate Grievances and Appeals, which denied Plaintiff's appeal on the merits. *Id. Att. N; Att. O.*

IV. Procedural History

Acting *pro se*, Plaintiff filed a Complaint in this Court on June 6, 2004, naming forty-three Defendants. Plaintiff filed a First Amended Complaint on August 23, 2004. I granted Defendants' Motion to Dismiss as to some of the Defendants. See *Doc. No. 24.* Plaintiff moved for appointment of counsel from the Prisoner Civil Rights Panel on September 23, 2004. On October 1, 2004, I granted Plaintiff's Motion and submitted the matter to the Panel. I appointed counsel for Plaintiff on August 19, 2005.

With the agreement of the parties, I allowed Plaintiff, through counsel, to file his Second Amended Complaint on November 2, 2005. Defendants moved for summary judgment, and Plaintiff responded by seeking to file a Third Amended Complaint, adding a retaliation claim. I denied Defendants' Motion without prejudice and allowed Plaintiff to file the Third Amended Complaint.

Plaintiff makes claims against each Defendant in his or her individual and official capacities. I dismissed the claims against Defendants in their official capacities in my earlier ruling in this case. *Doc. No. 24*; see Hafer v. Melo, 502 U.S. 21, 25 (1991) (state officials receive the same protection from suit as is provided to their governmental entity). Plaintiff does not now suggest that he is entitled to proceed against Defendants in their official capacities. In addition, although the Third Amended Complaint includes an allegation that Defendants violated the Fourth Amendment when they searched Plaintiff's cell, Plaintiff has apparently abandoned this claim. See *Third Am. Compl. at 11 ("Count 1: Unreasonable Searches and Seizures")*; *Pl. Resp. to Mot. S. J. (Doc. No. 46)*; *Pl. Resp. in Opp. to Def. Reply (Doc. No. 49)*; Hudson v. Palmer, 468 U.S. 517, 526 (1984) (Fourth Amendment prohibition against unreasonable searches and seizures does not apply to an inmate's cell). In his remaining claims, Plaintiff alleges: (1) retaliation for filing Grievance No. 21413 and (2) due process violations related to the disciplinary hearings and his property loss. Defendants ask me to dismiss these claims pursuant to Fed. R. Civ. P. 56.

DISCUSSION

I. Plaintiff's Retaliation Claim

In Grievance No. 21413, filed on May 23, 2002, Plaintiff complained about the May 9 and May 14 searches. Plaintiff asserts that all Defendants' subsequent actions — the June 5 search, the demand for a urine sample, the misconduct reports, Plaintiff's placement in disciplinary custody, and the loss of Plaintiff's property — were taken in retaliation for filing Grievance No. 21413. *Third Am. Compl. at ¶ 59*; *Pl. Resp. to Mot. S.J. at 21*. A prisoner alleging retaliation must show that: (1) the conduct that led to the alleged retaliation was constitutionally protected; (2) he suffered some adverse action; and (3) the constitutionally protected conduct was a substantial or motivating factor in the decision to take adverse action. Rauser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001). Plaintiff cannot make this showing.

Defendants have conceded that Plaintiff has met his burden with respect to the first element. See *Def. Mot. S.J. at 28*; Milhouse v. Carlson, 652 F.2d 371, 373–74 (3d Cir. 1981) (under First and Fourteenth Amendments, state prisoners have right to petition government for redress of grievances); Allah v. Al-Hafeez, 208 F. Supp. 2d 520, 535 (E.D. Pa. 2002) (same).

To establish the second element of a retaliation claim — adverse action — a prisoner must show that the action taken against him "was sufficient to deter a person of ordinary firmness from exercising his constitutional rights." Rauser, 241 F.3d at 333 (citing Allah v. Seiverling, 229 F.3d 220 (3d Cir. 2000)). The Third Circuit has deemed the prosecution of false misconduct reports and the placement of a prisoner in administrative segregation sufficient to support a retaliation claim. See Smith v. Mensinger, 293 F.3d 641, 653 (3d Cir. 2002); Allah, 229 F.3d at 225. Here, Plaintiff has alleged that: his cell was searched several times; he received several unsupported Misconducts; he was placed in administrative segregation for ninety-two

days; he lost wages; he was subjected to severe living restrictions; and his personal property was wrongfully taken without proper compensation. See *Pl. Resp. to Mot. S.J. at 21*. A jury might determine that these actions are "sufficient to deter a person of ordinary firmness from exercising his constitutional rights."

To establish the third retaliation element — that the constitutionally protected conduct was a substantial or motivating factor in the decision to take adverse action — evidence of "temporal proximity" is relevant, but not dispositive. Lape v. Pennsylvania, 157 Fed. Appx. 491, 498 (3d Cir. 2005); see also Estate of Smith v. Marasco, 318 F.3d 497, 513 (3d Cir. 2003) (if "timing alone" is used to establish causation, facts must be "unusually suggestive" of retaliatory motive). Accordingly, a plaintiff must also offer evidence sufficient to support an inference that the defendants were aware of the constitutionally protected activity before the alleged retaliation took place. Jubilee v. Horn, 959 F. Supp. 276, 283 (E.D. Pa. 1997). Allegations of awareness based on broad, conclusory, and unsubstantiated assertions are insufficient. Id.

The undisputed facts show that Plaintiff cannot make out causation. First, Clayton and Hardnett (the Officers who conducted the May 9 search and the only individuals mentioned in Grievance No. 21413) were not involved in any of the adverse actions. Accordingly, I am obligated to dismiss the retaliation claims as to these Officers. See Sutton v. Rasheed, 323 F.3d 236, 249 (3d Cir. 2003) ("'[D]efendant[s] in a civil rights action must have personal involvement' to be liable." (quoting Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988)).

Plaintiff also alleges that Officers Pickett and Schneider retaliated against him for filing Grievance No. 21413 by attempting to search his cell on June 5, 2002. First, it is undisputed that the Officers were not involved in the searches complained of in Grievance No. 21413, and were

unaware of the Grievance itself. See *Pickett Decl.; Schneider Decl.* Indeed, Plaintiff has offered no evidence to support his belief that any of the other Defendants knew of the Grievance before the June 5 search was conducted. See *Kephart Decl.; Brumfield Decl.; Canino Decl.; Knauer Dep. at 52*. In these circumstances, I am obligated to dismiss the retaliation claim as to all these Defendants. See Jubilee, 959 F. Supp. at 283.

Finally, Plaintiff has offered virtually no evidence to rebut Defendants' proof that the great bulk of the "retaliatory actions" — the demand for a urine sample, the misconduct reports, and Plaintiff's placement in disciplinary custody — occurred because of Plaintiff's refusal to comply with the June 5, 2002 strip search order. See *Third Am. Compl. at ¶¶ 35, 37, 41, 42, 45, 46, 48*. Rather, Plaintiff offers only temporal proximity evidence (the two weeks between his filing of Grievance No. 21413 and the June 5, 2002 search) to support his belief that the search was retaliatory. See *Pl. Resp. to Mot. S.J. at 21*. Once again, the Third Circuit has held that such evidence alone is not sufficient to show causation. See Estate of Smith, 318 F.3d at 513. Thus, Plaintiff cannot actually dispute that any adverse actions — except for the failure to return Plaintiff's property — were caused by Plaintiff's refusal to submit to the June 5, 2002 search. That refusal is not constitutionally protected conduct, however. See, e.g., Collins-Bey v. Frank, No. 05-453, 2005 U.S. Dist. LEXIS 19214, at *8–*9 (E.D. Wis. Sept. 2, 2005). As for Plaintiff's claim of "retaliatory" loss of his soap and other property, he nowhere alleges that the loss was intentional. Accordingly, he cannot argue that it was retaliatory. See Rauser, 241 F.3d at 333.

In sum, Plaintiff has shown no causal connection between the adverse actions taken against him and any protected activity. Booth v. Pence, 141 Fed. Appx. 66, 68 (3d Cir. 2005). I am, therefore, obligated to dismiss his retaliation claim.

II. Plaintiff's Due Process Claims

A. Plaintiff's Disciplinary Custody

Citing various prison regulations, Plaintiff charges that Defendants violated his due process rights when, after hearings on Misconduct Nos. A311875 and 412863, he was sentenced to RHU for 180 days (but actually spent only 92 days there). *Pl. Resp. to Mot. S.J. at 22–25*. Plaintiff appears to allege that the hearings did not afford him due process because the resulting decisions were based on insufficient evidence. *Id.* (asserting that Plaintiff's "sentence in the hole was based on questionable evidence[] and served no legitimate penological purpose"). Plaintiff has not, however, shown that the hearings themselves were procedurally deficient. That an inmate is dissatisfied with the result of proceedings does not affect their adequacy under the Fourteenth Amendment. E.g., McEachin v. Beard, 319 F. Supp. 2d 510, 515 (E.D. Pa. 2004).

Further, assuming *arguendo* that Plaintiff's hearing was procedurally deficient, I also conclude that his placement in disciplinary custody did not implicate any "liberty interest." 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 RHU 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

RHU — the same regulations Plaintiff invokes here. See Sandin, 112 F.3d at 706-709; *Pl. Exh. C, "DC-ADM 203"; Pl. Exh. E, "DC-ADM 201."* 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).

Applying this controlling authority, I conclude that Plaintiff's 92-day stay in disciplinary custody did not violate due process. Significantly, the plaintiff in Griffin experienced the same change in conditions as Plaintiff when he was transferred from Graterford's general inmate population to disciplinary custody. The Griffin Court held that this transfer to RHU without a hearing for 15 months did not implicate a liberty interest. Here, under essentially identical prison regulations, Plaintiff challenges confinement in RHU for only ninety-two days. That challenge is without merit. See also Thorpe v. Dohman, No. 04-1099, 2004 U.S. Dist. LEXIS 21495, at *10 (E.D. Pa. Oct. 22, 2004); (granting motion to dismiss where Plaintiff alleged placement in RHU for fifteen days without a hearing); Whittington v. Vaughn, 289 F. Supp. 2d 621, 626 (E.D. Pa. 2003) ("[T]he 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.").

B. Dispersal of Plaintiff's Property

Plaintiff argues that the temporary transfer of his belongings and resulting loss of soap and other sundries amounted to the deprivation of his property without due process. See *Pl. Resp. to Mot. S.J. at 25–26*. Although Plaintiff filed two Grievances in connection with this incident, he alleges that the process was inadequate because the initial response was delayed for nine months and he was never compensated for his loss. *Id.* I disagree.

The Supreme Court has held that when prisoners are deprived of personal property, meaningful post-deprivation remedies provide sufficient process. Parratt v. Taylor, 451 U.S. 527, 544 (1981); Hudson v. Palmer, 468 U.S. 517, 532 (1984). In Parratt, prison officials lost the inmate-plaintiff's "hobby kit" which he had ordered and had sent to the prison. 451 U.S. at 530. The Court held that where negligent actions of state actors result in the deprivation of property, due process is nonetheless provided by meaningful post-deprivation remedies. Id. at 543–44. This holding was expanded in Hudson to intentional deprivations of an inmate's property. 468 U.S. at 533.

The Third Circuit has held that the DOC's prison grievance procedure provides an adequate post-deprivation of property remedy. E.g., Tillman v. Lebanon County Corr. Facility, 221 F.3d 410, 422 (3d Cir. 2000); see also McEachin, 319 F. Supp. 2d at 514–15; Allah, 208 F. Supp. 2d at 536–37; Austin v. Lehman, 893 F. Supp. 448, 454 (E.D. Pa. 1995). That an inmate is dissatisfied with the result of these proceedings does not affect their adequacy as a post-deprivation remedy. McEachin, 319 F. Supp. 2d at 515.

Plaintiff filed Grievance No. 26885 to complain about his property loss and Grievance No. 48468 to complain about the delay in Smith's response. He appealed both Grievances through each available level of review. Plaintiff's appeal was denied not because of Smith's

delay, but because of his own failure to comply with the prison's rules regarding Grievance appeals. See Wheeler v. Beard, No. 03-4826, 2005 U.S. Dist. LEXIS 158432, at *44–*45 (E.D. Pa. Aug. 3, 2005) (harmless delay in adjudication of grievance does not constitute denial of post-deprivation due process). In these circumstances, it is evident that Defendants afforded Plaintiff ample process. Accordingly, I am compelled to dismiss Plaintiff's claim that the disposition of these Grievances violated due process.

Appropriate Orders follow.

_____ _____

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

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

CARL ELISAS WHITEHEAD	**:**	**CIVIL ACTION**
Plaintiff,	**:**	
	:	
v.	**:**	
	:	**NO. 04-CV-1853**
JEFFREY BEARD et al.	**:**	
Defendants.	**:**	

ORDER

AND NOW, this 30th day of March, 2006, upon consideration of Defendants' Renewed Motion for Summary Judgment (Doc. No. 45), Plaintiff's response (Doc. No. 46), Defendants' Reply, Plaintiff's Sur-Reply, and any related submissions, it is hereby **ORDERED** that the Motion is **GRANTED**.

The Clerk's Office shall close this case for statistical purposes.

BY THE COURT:

/s Paul S. Diamond, J.

_____

Paul S. Diamond, J.