

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

PATRICK VANGOETHEM

v.

**WILLIAM LAWTON, MICHELE FARRELL,
and KAREN BRYANT**

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NO. 13-6696

NORMA L. SHAPIRO, J.

AUGUST 5, 2014

Before the court is defendants' motion to dismiss plaintiff's complaint. Plaintiff Patrick Vangoethem, in custody at the Philadelphia Industrial Correction Center when he filed this action, alleges that beginning on January 26, 2012 until the date of filing, November 18, 2013, he was housed in an overcrowded cell at one of three different Philadelphia County Prisons. He claims that these conditions violate his constitutional rights. Plaintiff brings this action under 42 U.S.C. § 1983. The court granted plaintiff's application to proceed *in forma pauperis* on January 4, 2014. On May 20, 2014, the City, on behalf of the named defendants, filed a motion to dismiss. The motion is unopposed.

I. BACKGROUND

Plaintiff filed a handwritten complaint alleging counts against three defendants: Warden William Lawton, Warden Michele Farrell, and Warden Karen Bryant. Plaintiff alleges that during his incarceration within the Philadelphia Prison System he was placed in a three man cell, a two person cell with a plastic boat on the floor for a third inmate.¹ He also alleges that he was malnourished and denied visitation hours. He alleges that while in custody he broke his left wrist,

¹See *Williams v. City of Philadelphia*, Civ. No. 08-1979, Docket No. 87. Actions for damages are excluded from the waiver in the settlement agreement between plaintiffs in the class action settlement on behalf of all current and future persons confined in the Philadelphia Prison System. Section X.A. states "plaintiffs do not waive their rights to pursue individual claims for monetary damages under federal or state law." All such actions have been assigned to this court.

an injury for which he has never received medical attention.

II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 12(b)(6), a district court may dismiss all or part of an action for failure to state a claim upon which relief can be granted. A complaint must contain sufficient facts that, when accepted as true, state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007). A complaint is facially plausible if it pleads “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 663. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” do not establish a plausible allegation. *Id.*

III. DISCUSSION

Section 1983 provides remedies for deprivations of rights established in the Constitution or by federal law. To state a claim under § 1983, a plaintiff must demonstrate the defendant, acting under color of state law, deprived him of a right secured by the Constitution or the laws of the United States. *Kaucher v. Cnty. of Bucks*, 455 F.3d 418, 423 (3d Cir. 2006). If a plaintiff brings suit against individual defendants, personal wrongdoing must be shown “through allegations of personal direction or of actual knowledge and acquiescence.” *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). The plaintiff must allege a defendant’s personal involvement because a defendant cannot be held liable for a constitutional violation he did not participate in or approve. *Baraka v. McGreevey*, 481 F.3d 187, 210 (3d Cir. 2007).

Plaintiff’s complaint appears to allege a Section 1983 claim based on his housing in the overcrowded Philadelphia Prison System. He alleges he was placed in a three man cell that caused him to suffer “countless sleepless nights, anxiety, depression and stress.” He also alleges

that he has been malnourished while in custody. Plaintiff appears to be articulating a Section 1983 claim for violations of his Fourteenth Amendment right of due process. The Supreme Court has determined “a detainee may not be punished prior to an adjudication of guilt in accordance with the due process of law.”² *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

Plaintiff names the wardens of the Curran-Frumhold Correctional Facility, House of Corrections, and the Philadelphia Industrial Correctional Center as defendants. Plaintiff has failed to include any allegations that these wardens were personally involved in the alleged deprivation of his constitutional rights. He only makes one statement regarding their involvement, “the Wardens in the named facilities caused these issues of overcrowding.” This conclusory statement is not sufficient to state a claim against individual defendants under Section 1983.

Plaintiff also appears to allege a medical indifference claim based on a failure to provide medical attention for his broken wrist. The complaint includes no allegations linking this alleged medical issue to the named defendants. The plaintiff has not included any of the prisons’ medical providers as defendants in his action.

IV. CONCLUSION

Defendants’ motion to dismiss plaintiff’s complaint will be granted. Plaintiff will be granted leave to amend his complaint. An appropriate order follows.

²Plaintiff does not allege that he is a pretrial detainee. However, since the court construes the facts in the light most favorable to the plaintiff for purposes of this motion, the court will assume he has not been convicted while in PPS custody.

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AND NOW, this 5th day of August, 2014, upon consideration of plaintiff's complaint (paper no. 5), and defendants' unopposed motion to dismiss (paper no. 6), and for the reasons set forth in the accompanying memorandum, it is **ORDERED** that:

1. The motion to dismiss (paper no. 6) is **GRANTED**.
2. Plaintiff is given leave to file and serve an amended complaint stating a plausible claim against viable defendants under 42 U.S.C. § 1983 within forty-five (45) days of this order.
3. If an amended complaint is filed, defendants shall file and serve their responses in accordance with the Federal Rules of Civil Procedure and the Local Rules of this court.

/s/ Norma L. Shapiro

J.