

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

CHARLES E. DOCKINS, JR. : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
THOMAS RIDGE, GOVERNOR, et al., :
Defendants, : NO. 96-0975

MEMORANDUM & ORDER

J.M. KELLY, J.

DECEMBER , 1998

Plaintiff in this action, Charles E. Dockins, Jr. ("Dockins") filed his initial Complaint in this matter on February 8, 1996. In a Memorandum and Order in this matter dated February 23, 1996, I ordered Dockins to 1) identify the defendants in the action in the caption of the complaint, 2) either identify the class representatives in the proposed class action or decide to proceed individually and 3) set forth the factual allegations of the complaint in a succinct, clear manner that identifies the actions of Defendants and how those actions violated Dockins' constitutional rights, as required by Federal Rule of Civil Procedure 8(a). The Court dismissed the deficient complaint without prejudice.

On March 19, 1996, Dockins filed a "Motion to Amend Memorandum or Judgment and to Amend the Complaint." On March 29, 1996, the Court dismissed Dockins' Motion and reiterated what Dockins is required to set forth in an amended complaint. Dockins then waited almost two years before he filed another document in this matter. On February 2, 1998, Dockins filed a

document entitled "Motion to Recall the Mandate Out of Time." Dockins then filed a motion seeking a temporary restraining order or a preliminary injunction on March 2, 1998, and a motion for appointment of counsel on May 4, 1998. By Memorandum and Order dated May 26, 1998, the Court denied the Motion to Recall the Mandate Out of Time. The Court considered, in part, whether Dockins' Motion could be considered a complaint. The Court determined that this document was insufficient as a complaint, denied the Motion to Recall the Mandate and dismissed the remaining motions as moot. On July 20, 1998, Dockins filed an Amended Complaint naming as defendants Barbara Drescher, Joseph M. Kolar, Jr., Martin F. Horn, Martin L. Dragovich, Robert M. Novotney, Edward J. Klem, Scot Warren, Phillip M. Duck and "School Guidance Counselr (sic)" Ramer.

Defendants have filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute and Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Dockins has filed a Motion for Extension of Time to respond to Defendants' Motion to Dismiss, a Motion for Appointment of Counsel and a motion that the Court shall consider as a Motion to Compel Discovery. Dockins also appears to want the Court to order the Clerk of Court to provide him with the order that he believes was entered in this case, requiring Defendants to answer Dockins' Complaint.

DISCUSSION

As an initial issue, the Court notes that the order that Dockins seeks does not exist. Dockins' Amended Complaint should have been subject to a frivolousness determination pursuant to 28 U.S.C. 1915(c)(2)(B)(ii) (1994), but because the parties have briefed the issues involved in the Motion to Dismiss, the Court shall address the issues that have been briefed. Further, Dockins has filed a Response to the Motion to Dismiss, so the Court shall dismiss his Motion for an extension of time as moot. As a dismissal for lack of prosecution would preclude any adjudication of the merits of Dockins' Complaint, the Court shall first analyze the Complaint under Rule 12(b)(6).

RULE 12(b)(6)

The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of a complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed for failure to state a claim upon which relief may be granted if the facts pled and reasonable inferences therefrom are legally insufficient to support the relief requested. Commonwealth ex. rel. Zimmerman v. Pepsico, Inc., 836 F.2d 173, 179 (3d Cir. 1988). In reviewing a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party. Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985).

A liberal reading of Dockins' Complaint indicates that he is trying to raise the following issues: 1) he has been denied his constitutional right to parole and that denial was racially motivated; 2) prison agreements with Netix and AT&T violate the antitrust laws; and 3) Defendants have altered the prison ventilation system at State Correctional Institution Mahonoy ("Mahonoy") in such a way that Plaintiff and other prisoners may be injured in the future.

Contrary to Dockins' assertion, there is no constitutional right to parole in Pennsylvania. The establishment of a minimum sentence does not create an expectation of or a right to release upon reaching that minimum date. Burkett v. Love, 89 F.3d 135, 138 (3rd Cir. 1996); Reider v. Commonwealth of Pa. Bd. of Probation & Parole, 100 Pa. Commw. 333, 342-43, 514 A.2d 967, 971 (1986). Accordingly, Dockins has not stated a claim based upon a right to parole. An underlying basis of Dockins' claim appears to be that parole has become more difficult in Pennsylvania as a result of highly publicized violent crimes committed by individuals on parole. While Dockins may have caught the parole system at the wrong time, this does not amount to an additional sentence because Dockins has merely served his minimum sentence, and any additional time is still part of the original sentence.

Dockins, who is black, alleges that he has been denied parole because all of the parole decision makers who have reviewed his application are white. Beyond this conclusory

allegation, Dockins has only alleged one instance of racial animus at Mahonoy. That one instance was an unrelated racial epithet made by a person not related to the parole decision process. Therefore, Dockins has failed to allege sufficient facts to support his racial discrimination claim.

Dockins also claims that Defendant Drescher in some manner constitutionally infected the parole process because she, prior to reviewing Dockins' parole application, had worked in the same office that convicted him. Dockins does not allege that Drescher in fact prosecuted him or had any involvement in his prosecution. The mere presence of Drescher in the Philadelphia District Attorney's office is insufficient to draw any inference that she violated some constitutional right of Dockins.

The Pennsylvania Department of Corrections contracts with AT&T and Netix to provide phone service in the Pennsylvania prisons. Prisoners must call collect to make outgoing phone calls. Prisoners may not make calls to 800 numbers, 900 numbers or make three-way calls. A prisoner may not call a discount collect service like 1-800-COLLECT. As a result, the families of prisoners must pay the undiscounted rate for calls from the prisoner. Dockins alleges that this system violates the Sherman Act, 15 U.S.C. § 1, and the Clayton Act, Id. § 12.¹ To state a

¹Dockins also alleges that this system is the fraudulent practice where long distance carriers are switched without the customer's consent, known as "slamming." While Dockins has alleged that family members switched to AT&T long distance service in the vain hope that they would be billed less
(continued...)

claim under the Sherman Act, Dockins must show the possession of monopoly power in the relevant market. Crossroads Cogeneration Corp. v. Orange & Rockland Util. Inc., No. 97-5470, 1998 WL 744598, at *12 (3d Cir. 1998). Here, Dockins has failed to allege any relevant market, but assuming he intended the Pennsylvania prison system to comprise the relevant market, it would be insufficient for the purposes of the Sherman Act. The Clayton Act regulates mergers in restraint of trade. 15 U.S.C. § 12. Dockins' Complaint alleges no merger. Accordingly, the antitrust claims shall be dismissed.

Dockins' claim based upon the ventilation system at Mahonoy can be construed as a claim of cruel and unusual punishment in violation of the Eighth Amendment. The Eighth Amendment, as it relates to prison conditions, protects inmates from the "unnecessary and wanton infliction of pain." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). "Extreme deprivations are required to make out a conditions of confinement claim." Hudson v. McMillian, 503 U.S. 1, 9 (1992). A conditions of confinement claim may be stated for possible future harm, Helling v. McKinney, 509 U.S. 25, 33 (1993). The touchstone of such a claim remains that prison officials, to be held liable, must deprive a prisoner of "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. at 347. Here, Dockins

¹(...continued)
for calls from Dockins, there is no allegation that such switches were the result of any fraud. Further, Dockins does not have standing to assert this claim on behalf of others.

alleges that changes in the ventilation system may lead to future conditions such as Legionnaire's Disease and has exacerbated his present cough. The potential for Legionnaire's Disease alleged by Dockins is, at best, a remote possibility and hardly arises to an unnecessary and wanton infliction of pain as required by the Eighth Amendment. Likewise, Dockins' cough is not the type of serious pain contemplated by the Eighth Amendment.

RULE 41(b)

Were Dockins' Amended Complaint to survive analysis under Rule 12(b)(6), the Court would dismiss this action for lack of prosecution. Dismissal for lack of prosecution requires the Court to balance six factors: 1) the plaintiff's personal responsibility for the delay; 2) prejudice to the defendants; 3) a history of dilatoriness; 4) whether the delay was wilful or in bad faith; 5) the effectiveness of sanctions other than dismissal; and 6) whether the claim is meritorious. Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863, 868 (1984).

In this case, Dockins was solely responsible for the almost two year delay from the time he filed his Motion to Amend until the time he filed his Motion to Recall the Mandate. As a result of the delay, Dockins' allegations have grown stale and Defendants would be required to defend allegations that would otherwise be barred by the applicable statute of limitations. Dockins' delay does not constitute a history of dilatoriness in the sense that Dockins has repeatedly delayed the progress of his

case, but the Court is convinced that the two year delay here is as egregious as a series of smaller delays. Further, Dockins was specifically instructed twice by the Court how to proceed in this matter and failed to follow those instructions. There is no suggestion that Dockins has delayed this action in bad faith. As for alternative sanctions, there is no indication that any sanction other than dismissal would be effective. Dockins is proceeding in forma pauperis and would be unable to pay attorney's fees related to the delay. Because Dockins is appearing pro se, any reprimand by the Court is likely to have no effect. Finally, the Court has already determined that Dockins' claims lack merit. Accordingly, the great weight of the Poulis analysis balances in favor of dismissal of the Complaint.

CONCLUSION

Because the Motion to Dismiss shall be granted, the remaining motions are moot. Dockins' Motion to Compel and Motion for the Appointment of Counsel are denied.

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

CHARLES E. DOCKINS, JR. : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
THOMAS RIDGE, GOVERNOR, et al., :
Defendants, : NO. 96-0975

O R D E R

AND NOW, this day of December, 1998, upon consideration of the Defendants' Motion to Dismiss pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and Fed. R. Civ. P. 12(b)(6) for failure to state a claim (Doc. No. 13), Plaintiff's Response thereto (Doc. No. 15), Plaintiff's Motion for Extension of Time (Doc. No. 14), Plaintiff's Motion for Appointment of Counsel (Doc. No. 16) and Plaintiff's Motion to Compel Discovery (Doc. No. 17), it is ORDERED:

1. Defendants' Motion to Dismiss (Doc. No. 13) is GRANTED. Plaintiff's Complaint is DISMISSED.

2. Plaintiff's Motion for Extension of Time (Doc. No. 14), Plaintiff's Motion for Appointment of Counsel (Doc. No. 16) and Plaintiff's Motion to Compel Discovery (Doc. No. 17) are DISMISSED as MOOT.

BY THE COURT:

JAMES MCGIRR KELLY, J.