

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

MARTIN GORDON : CIVIL ACTION
v. :
DONALD VAUGHN, et al. : NO. 99-1511

M E M O R A N D U M

WALDMAN, J.

May 12, 1999

Plaintiff is a prisoner at the State Correctional Institution at Graterford (S.C.I. Graterford). He has filed a twenty-two page handwritten pro se 42 U.S.C. § 1983 complaint against Superintendent Donald T. Vaughn and fifty seven other employees of S.C.I. Graterford, claiming numerous violations of his constitutional rights. Plaintiff's recitation is redundant and not always cogent. As best as the court can discern his claims essentially fall into the following categories: (1) he was assaulted and injured by staff members; (2) he was provided either no medical care or inadequate treatment for his injuries; (3) his cell was searched and his personal property was destroyed without due process; (4) he was falsely charged with institutional misconduct; (5) he was denied due process in the adjudication of his misconduct charges; (6) institutional grievances that he filed against staff members were routinely denied; and (7) he was subjected to inhumane conditions in various cells that he occupied.

With his complaint, plaintiff filed a motion to proceed in forma pauperis. By order of May 3, 1999, the court permitted

plaintiff to proceed without prepayment of fees upon the assessment of an initial partial filing fee of \$1.24. For the reasons which follow, the complaint will be dismissed in part.

A prisoner has no reasonable expectation of privacy in his cell. Hudson v. Palmer, 468 U.S. 517, 529-30 (1984). That plaintiff's cell was searched outside his presence, even if in violation of prison regulations, is not a federal constitutional violation.

Even an unauthorized deprivation of an inmate's property does not support a due process claim where an adequate post-deprivation remedy is available. Hudson, 468 U.S. at 533. Prison grievance procedures constitute an adequate remedy. See Hudson, 468 U.S. at 536 n.14. See also Diaz v. Coughlin, 909 F. Supp. 146, 150 (S.D.N.Y. 1995); Ramos v. Vaughn, 1995 WL 386573, *7-8 (E.D. Pa. June 27, 1995); Blackiston v. Vaughn, 1993 WL 541705, *2 (E.D. Pa. December 28, 1993). Even the deprivation of "legal property" will not support a constitutional claim when the plaintiff has failed to show that he suffered actual injury in the pursuit of a viable legal claim. See Lewis v. Casey, 518 U.S. 343, 351 (1996); Oliver v. Fauver, 118 F.3d 175, 177-78 (3d Cir. 1997). As this is plaintiff's only claim against Correctional Officer John Doe 1, he will be dismissed as a defendant in this action.

A false charge of institutional misconduct is not a federal constitutional violation. See Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986), cert. denied, 485 U.S. 982 (1988);

Flanagan v. Shively, 783 F. Supp. 922, 931-32 (M.D. Pa.), aff'd, 980 F.2d 722 (3d Cir. 1992), cert. denied, 510 U.S. 829 (1993). As this is plaintiff's only claim against Sergeant Bunny Womack and Correctional Officer D. Kephart, they will be dismissed as defendants in this action.

Plaintiff has not shown that his conviction of misconduct and sanction to disciplinary confinement imposed an "atypical and significant hardship" on plaintiff in relation to the "ordinary incidents of prison life." See Sandin v. Conner, 515 U.S. 472, 484 (1995). Plaintiff's claim that he was denied due process at his institutional misconduct hearings thus fails to state a cognizable federal constitutional claim. As plaintiff brings only this claim against hearing examiners Canino, Welby and John Doe 5, they will be dismissed as defendants in this action.

The failure of a prison official to provide a favorable response to an inmate grievance is not a federal constitutional violation. See Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994), cert. denied, 514 U.S. 1022 (1995); McGuire v. Forr, 1996 WL 131130, *1 (E.D. Pa. March 21, 1996), aff'd, 101 F.3d 691 (3d Cir. 1996); Hoover v. Watson, 886 F. Supp. 410, 418 (D. Del.), aff'd, 74 F.3d 1226 (3d Cir. 1995). As this is plaintiff's only claim against grievance coordinator Mary Ann Williams and assistant grievance coordinator Allan LaFabre, they will be dismissed as defendants in this action.

Plaintiff may proceed at this juncture with the balance of the claims set forth in the complaint against those defendants who are allegedly implicated. An appropriate order will be entered.

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O R D E R

AND NOW, this day of May, 1999, consistent
with the accompanying memorandum, **IT IS HEREBY ORDERED** that:

1. Plaintiff's claims that his cell was unlawfully searched; he was deprived of personal property without due process; he was falsely charged with institutional misconduct; he was denied due process in the adjudication of misconduct charges; and, he received unfavorable responses to institutional grievances are **DISMISSED** pursuant to 28 U.S.C. § 1915(e) (2)(B)(ii) and accordingly John Doe 1, Sergeant Bunny Womack, C/O D. Kephart, Hearing Examiner Mary Canino, Hearing Examiner Welby, John Doe 5, Grievance Coordinator Mary Ann Williams and Assistant Grievance Coordinator Allan LaFabre are **DISMISSED** as defendants herein. The Clerk is directed to strike these defendants from the caption of the complaint.

2. The balance of the complaint may proceed against the remaining defendants. The complaint is to be filed, the summonses are to issue, service of the summonses and complaint are to be made upon the remaining defendants by the U.S. Marshals Service in the event that waiver of service is not effected under

Fed. R. Civ. P. 4(d)(2). The Clerk shall also send a copy of the complaint to the attorney representing S.C.I. Graterford. To effect waiver of service the Clerk of Court is specially appointed to serve written waiver requests on the defendants. The waiver of service requests shall be accompanied by a copy of the complaint and shall inform the defendants of the consequences of compliance and of failure to comply with the requests. The requests shall allow the defendants at least 30 days from the date they are sent (60 days if addressed outside any judicial district of the United States) to return the signed waivers. If a signed waiver is not returned within the time limit given, the Clerk of Court's office shall transmit the summons and a copy of the complaint to the U.S. Marshals Service for immediate service under Fed. R. Civ. P. 4(c)(1), and a copy of this Order is to be directed to all remaining parties.

3. All original pleadings and other papers submitted for consideration to the Court in this case are to be filed with the Clerk of this Court. Copies of papers filed in this Court are to be served upon counsel for all other parties (or directly on any party acting pro se). Service may be by mail. Proof that service has been made is provided by a certificate of service. This certificate should be filed in the case along with the original papers and should show the day and manner of service. An example of a certificate of service by mail follows:

"I, (name) , do hereby certify that a true and correct copy of the foregoing (name of pleading or other paper) has been served upon (name(s) of person(s) served) by placing the same

in the U.S. Mail, properly addressed,
this (date) day of (month) , (year).

(Signature)"

If any pleading or other paper submitted for filing does not include a certificate of service upon the opposing party or counsel for opposing party, it may be disregarded by the Court.

4. Any request for court action shall be set forth in a motion, properly filed and served. The parties shall file all motions, including proof of service upon opposing parties, with the Clerk of Court. The Federal Rules of Civil Procedure and local rules are to be followed. Plaintiff is specifically directed to comply with Local Civil Rule 7.1 and serve and file a proper response to all motions within fourteen (14) days. Failure to do so may result in dismissal of this action.

5. Plaintiff is **not** required to comply with Section 4:01 of the Civil Justice Expense and Delay Reduction Plan for the United States District Court for the Eastern District of Pennsylvania (the "Plan"), unless directed by further Order of the Court.

6. Plaintiff is specifically directed to comply with Local Rule 26.1(f) which provides that "[n]o motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute." Plaintiff shall attempt to resolve any discovery disputes by contacting

defendant's counsel directly by telephone or through correspondence.

7. No direct communication is to take place with the District Judge or United States Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

8. In the event a summons is returned unexecuted, it is plaintiff's responsibility to ask the Clerk of the Court to issue an alias summons and to provide the Clerk with the defendant's correct address, so service can be made.

9. The parties should notify the Clerk's Office when there is an address change. Failure to do so could result in court orders or other information not being timely delivered, which could affect the parties' legal rights.

10. The Clerk is directed to send a copy of this order to the attorney representing S.C.I. Graterford.

BY THE COURT:

JAY C. WALDMAN, J.