

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

DAVID SOLAN : CIVIL ACTION  
 :  
v. :  
 :  
JANET RENO; R.M. REISH, :  
Warden, F.C.I. Schuylkill; AMY :  
KINDER, Case Manager, F.C.I. :  
Schuylkill : NO. 99-1017

M E M O R A N D U M

DUBOIS, J. APRIL , 1999

Plaintiff, an inmate at Federal Correctional Institution Schuylkill (F.C.I. Schuylkill), has filed a pro se Bivens<sup>1</sup> action against Attorney General Janet Reno, Warden R.M. Reish, and Case Manager Amy Kinder. Plaintiff alleges that his sentencing court ordered him to pay a \$550 special assessment, of which he has paid \$100 since being incarcerated in 1994. Pursuant to Bureau of Prisons' Program Statement 5380.05, Inmate Financial Responsibility Program (IFRP), plaintiff was in IFRP "refuse" status for failure to make adequate payments toward the assessment when he was transferred to F.C.I. Schuylkill on August 25, 1997. At F.C.I. Schuylkill, plaintiff was assigned a job,

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1. Plaintiff filed this action pursuant to 42 U.S.C. § 1983. Because a § 1983 action may not be brought against a federal official, it will be treated as an action brought pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). In Bivens, the Supreme Court established a direct cause of action under the Constitution against federal officials for the violation of constitutional rights.

agreed in writing to make the minimum \$25 IFRP payment per quarter, and was placed in IFRP "participate" status. However, without his knowledge, plaintiff was soon returned to IFRP "refuse" status, which allowed him to receive only \$5.25 maintenance pay per month rather than full wages. When plaintiff discovered that he was receiving only maintenance pay, he refused to work, and was charged with and convicted of institutional misconduct. Plaintiff filed an administrative request to be removed from IFRP "refuse" status and to be paid full prison wages. His request was denied at each level of review for the reason that he had income, including outside contributions, and had not made the recommended \$25 payment or shown sufficient progress toward meeting the obligation.

Plaintiff asserts that he is unable to meet his financial obligation because he is paid insufficient wages, and he needs his maintenance pay and "small" outside contributions for legal expenses. He claims that his poverty has restricted his ability to pursue his legal actions, and to purchase necessary commissary items which are not provided by the prison, thereby making his life "torturous." Plaintiff also alleges that a radio he purchased from another inmate was confiscated as contraband and scheduled for destruction in December 1998. Plaintiff seeks injunctive relief and damages.

With his Complaint, plaintiff filed a request for leave to proceed In Forma Pauperis. As it appears he is unable to pay the cost of commencing this action, leave to proceed In Forma

Pauperis is granted. However, plaintiff's Complaint will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e), for the reasons which follow.

## **I. DISCUSSION**

### **A. Constitutionality of the IFRP**

Plaintiff's claim that he has a "due process liberty interest" in receiving full prison wages is without merit. Courts have consistently rejected due process challenges to the Inmate Financial Responsibility Program, 28 C.F.R. §§ 545.10 and 545.11, which requires that inmates commit a percentage of their prison wages to pay court-ordered obligations. See James v. Quinlan, 866 F.2d 627 (3d Cir. 1989); Dorman v. Thornburgh, 955 F.2d 57 (D.C. Cir. 1992). Plaintiff has no entitlement to a prison job or to be compensated in any particular amount for the work he performs. Bryan v. Werner, 516 F.2d. 233, 240 (3d Cir. 1975). Plaintiff's placement in IFPA "refuse" status with reduced pay for failure to comply with the terms of his repayment agreement is a matter within the discretion of prison officials under the IFPA. Dorman, *id.* at 58. This is the type of deprivation ordinarily contemplated by a prison sentence, and does not suggest an "atypical and significant hardship" on plaintiff which could give rise to due process protection. See Sandin v. Conner, 515 U.S. 472, 484.

Plaintiff also appears to be arguing that his right to equal protection is being violated because his IFPA obligation has rendered him "indigent" without a valid reason, while other

inmates earn full prison pay. Courts have held consistently that in the absence of a fundamental right or a protected class, neither of which is present in this case, equal protection only requires that a regulation which results in unequal treatment of an inmate bear some rational relationship to a legitimate penological interest. McGinnis v. Royster, 410 U.S. 263 (1973); Hodges v. Klein, 562 F.2d 276 (3d Cir. 1977). Because the IFPA serves the legitimate rehabilitative purpose of promoting inmate financial responsibility, James, id. at 630, plaintiff's claim that the IFPA has caused him to be indigent does not state a violation of his right to equal protection.

Finally, plaintiff claims that, due to his poverty, he cannot afford to purchase necessary commissary items or to make the required number of photocopies or telephone calls to pursue his legal actions. He asserts that his right to be free from cruel and unusual punishment and his right to access the courts have been violated.

Individuals in confinement must be provided basic needs such as food, clothing, medical care, and protection from violence. Farmer v. Brennan, 511 U.S. 825, 832 (1994). A constitutional violation only occurs when an alleged deprivation is "sufficiently serious," and prison officials acted with "deliberate indifference" to prisoner health or safety. Wilson v. Seiter, 501 U.S. 294, 298 (1992); Estelle v. Gamble, 429 U.S. 97, 104 (1976). Plaintiff's claim that he has limited means to purchase commissary items such as vitamins and foot care

products, telephone calls, stamps, and radio and television service, while regrettable, clearly is not "sufficiently serious" to state a federal constitutional violation.

Likewise, plaintiff's assertion that he missed a filing deadline in a 28 U.S.C. § 2255 habeas corpus action because he did not have sufficient funds to "constantly call the district court to keep abreast" of the case fails to state a claim of denial of access to the courts. In order to state such a claim, plaintiff must show that he suffered actual harm to his litigation efforts. Lewis v. Casey, 518 U.S. 343 (1996). Plaintiff is not claiming that he was denied the ability to send or receive appropriate papers in his § 2255 action due to his poverty. He merely implies that he would have had more time to file a timely answer to a motion to dismiss if he had been able to contact the court prior to his receipt of the motion by mail. Further, plaintiff states that his § 2255 action was eventually reinstated, albeit several months later. In response to plaintiff's Request for Administrative Remedy dated September 14, 1998, Warden R.M. Reisch informed plaintiff that he "may continue to maintain access to the courts through the receipt of stamps, legal copies, and legal calls in accordance with P.S. 1315.5, Inmate Legal Activities, as necessary." Plaintiff is not claiming that he has been denied his P.S. 1315.5 privileges, he simply believes he could more effectively further his legal actions if he had more income. Irregardless, plaintiff's access claim fails to state a federal constitutional violation because

he has not demonstrated that he suffered any real prejudice to his litigation efforts.

### **B. Institutional Misconduct Charge**

Plaintiff claims that he was charged with institutional misconduct when he refused to perform his assigned duties after discovering that he was receiving only maintenance pay rather than full prison wages. Plaintiff's assertion that his constitutional rights were violated because he had a valid reason for not working is without merit. The courts have held consistently that a wrongful institutional misconduct claim does not state 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).

### **C. Confiscation of Personal Property**

Plaintiff claims that a radio he purchased from another inmate was confiscated pursuant to prison rules prohibiting such transactions among inmates. Plaintiff asserts that he should have been allowed to keep the radio because he could not afford to buy one legitimately from the commissary. Plaintiff informed the Court that the radio was scheduled to be destroyed as contraband around December 25, 1998, and he filed a Motion for Issuance of a Temporary Restraining Order with his Complaint. As it appears that the radio has already been destroyed, plaintiff's motion must be denied as moot. Moreover, plaintiff's claim,

viewed in the light most favorable to him, charges a denial of procedural due process. Where a plaintiff possesses an adequate post-deprivation legal remedy by which he can recover the value of the property that has been deprived, the plaintiff has received all the process that he is due. Zinnermon v. Burch, 494 U.S. 113 (1990); Hudson v. Palmer, 468 U.S. 517 (1984). In the instant case, plaintiff's remedy for his alleged property loss is found in the Federal Tort Claims Act, 28 U.S.C. § 2672, et seq. Plaintiff is reminded of the requirement that he first exhaust the administrative remedies available under 28 U.S.C. §§ 542.10-542.16 if he chooses to file such an action. Plaintiff should also be mindful of the "three strikes" provision of 28 U.S.C. § 1915(g) pertaining to the filing of a civil action or appeal by a prisoner in forma pauperis.

## **II. CONCLUSION**

Plaintiff has advanced an "indisputably meritless legal theory." Neitzke v. Williams, 490 U.S. 319, 327 (1989). Accordingly, dismissal of this complaint pursuant to 28 U.S.C. § 1915(e) is appropriate. An order dismissing this complaint follows.

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O R D E R

AND NOW, this            day of April, 1999, in accordance  
with the accompanying Memorandum filed on this date, IT IS HEREBY  
ORDERED that:

1. Plaintiff's Motion for Leave to Proceed In Forma Pauperis is GRANTED;
2. Plaintiff's Motion for Issuance of a Temporary Restraining Order is DENIED AS MOOT; and
3. Plaintiff's Complaint is DISMISSED AS FRIVOLOUS pursuant to 28 U.S.C. § 1915(e).

BY THE COURT:

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JAN E. DUBOIS, J.