

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDWARD WILLIAMS, :
 :
 Plaintiff, : Civil Action No. 00-724-JJF
 :
 v. :
 :
 C/O KENNETH SMITH, et al., :
 :
 Defendants. :

Edward G. Williams, Pro Se, Smyrna, Delaware.

Gregory E. Smith, Esquire, DELAWARE DEPARTMENT OF JUSTICE,
Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

March 22, 2002
Wilmington, Delaware.

FARNAN, District Judge.

Presently before the Court is a Motion To Dismiss filed by Defendants Correctional Officer Kenneth Smith ("Defendant Smith") and Warden Robert Synder (collectively "Defendants"). (D.I. 13). Plaintiff Edward G. Williams, an inmate at the Delaware Correctional Center ("D.C.C."), filed the instant action pursuant to 42 U.S.C. § 1983. In his Complaint (D.I. 2), Plaintiff alleges that Defendants violated his rights under the Eighth Amendment by denying him medical treatment. For the reasons discussed, Defendants' Motion To Dismiss will be granted.

BACKGROUND

By his Complaint, Plaintiff alleges that, on an unspecified date, he and his cellmate, Mr. Thomas Ellerbe, smelled mace. The mace started to choke Plaintiff and he and Mr. Ellerbe called Defendant Smith for help. However, Defendant Smith ignored Plaintiff, causing Plaintiff to call for other guards. Plaintiff was ignored by all. Subsequently, Mr. Ellerbe had a seizure; however, he was not taken to the prison hospital for approximately one week after the incident.

Following D.C.C. procedure, Plaintiff filed a grievance outlining these allegations, which was never returned. On March 24, 2000, Plaintiff filed the instant Complaint. (D.I. 2). Defendants subsequently filed a Motion To Dismiss. (D.I. 13). In response to State Defendants' motion, Plaintiff filed a brief

styled "Motion To Dismiss / Motion For Summary Judgment."¹ (D.I. 15). Based on the content and structure of Plaintiff's argument, the Court will construe Plaintiff's brief as an Answering Brief to Defendants Motion To Dismiss.

STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may dismiss a complaint for failure to state a claim upon which relief may be granted.² Fed. R. Civ. P. 12(b)(6). The purpose of a motion to dismiss is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the case. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). When considering a motion to dismiss, a court must accept as true all allegations in the complaint and draw all reasonable factual inferences in the light most favorable to the plaintiff. Neitzke v. Williams, 490 U.S. 319, 326 (1989); Piecknick v. Pennsylvania, 36 F.3d 1250, 1255 (3d Cir. 1994). The Court is "not required to accept legal conclusions either alleged or inferred from the pleaded facts." Kost, 1 F.3d at 183. Dismissal is only appropriate when "it appears beyond doubt that the plaintiff can

¹The Court notes that Defendants, represented by a Deputy Attorney General, failed to respond to Plaintiff's briefing, either as a motion or as an answering brief, despite an Order from the Court requiring a response. (D.I. 16).

²Although Defendants do not indicate on what ground they rely to dismiss the Complaint, the Court presumes Defendants are moving to dismiss pursuant to Rule 12(b)(6).

prove no set of facts in support of his claims which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45 (1957).

DISCUSSION

I. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

By their motion, Defendants contend that Plaintiff's Complaint should be dismissed pursuant to The Prison Litigation Reform Act 42 U.S.C. § 1997e(c)(2), for failure to exhaust administrative remedies. (D.I. 13 at 1). Defendants contend that Plaintiff's failure to appeal his grievance decision, even though that grievance was ignored, constitutes failure to exhaust administrative remedies. (D.I. 13 at 1-3).

In reply, Plaintiff contends that his medical grievance was never returned, thereby denying him a right to exhaust all administrative remedies. (D.I. 15 at 1).

The Court of Appeals for the Third Circuit has concluded that there is no futility exception to Section 1997e(a). Nyhuis v. Reno, 204 F.3d 65, 71 (3d Cir. 2000). However, in this case, because prison officials ignored Plaintiff's grievance, Plaintiff's Complaint should not be dismissed for failure to exhaust administrative remedies. See Chapman v. Brewington-Carr, 2001 U.S. Dist. LEXIS 9047 (D. Del. May 1, 2001).

II. MEDICAL TREATMENT CLAIM

To establish an Eighth Amendment Claim for the denial of medical treatment "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104 (1976). This standard is met only if the prison authorities deliberately deprive a prisoner of adequate medical care or when the prison authorities fail to act despite their knowledge of "a substantial risk of serious harm." Daniels v Delaware, 120 F. Supp. 2d 411, 426 (D. Del. 2000). In order to be liable under this standard, the prison authorities must have acted wilfully or with "subjective recklessness." Id. at 427.

In his Complaint, Plaintiff alleges that Defendants acted with deliberate indifference by ignoring Plaintiff's cries for help when he smelled mace in his cell. (D.I. 2 at 3). Plaintiff alleges that his cellmate experienced a seizure, however, Plaintiff fails to allege that he himself experienced an injury which required medical treatment. (D.I. 2 at 3). Because Plaintiff was not injured, there cannot have been a "serious medical need" which Defendants were deliberately indifferent to. Further, absent an alleged injury there cannot be a substantial risk of serious harm.

CONCLUSION

For these reasons, the Court concludes that Plaintiff's Complaint fails to state a claim upon which relief can be granted, and Defendants' motion to dismiss will be granted.³

An appropriate Order will be entered.

³Because the Court concludes that Plaintiff fails to state a claim for denial of medical treatment under the Eighth Amendment, the Court will not address the remainder of Defendants arguments for dismissal.

