

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS L. MOORE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 01-330 JJF
	:	
RAPHAEL WILLIAMS, and	:	
M. JANE BRADY,	:	
	:	
Defendants.	:	

Thomas L. Moore, Delaware City, Delaware.
Pro Se Plaintiff.

MEMORANDUM OPINION

February 19, 2004

Wilmington, Delaware

Farnan, District Judge.

The Plaintiff, Thomas L. Moore, is a pro se litigant who was incarcerated at the Multi-Purpose Criminal Justice Facility ("MPCJF") in Wilmington, Delaware when he filed his complaint. His SBI number is 134083. Plaintiff filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

STANDARD OF REVIEW

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two-step process. First, a court must determine whether a plaintiff is eligible for in forma pauperis status. On June 5, 2001, the Court ordered Plaintiff to file a motion to proceed in forma pauperis and a certified copy of his prison trust account statement within thirty days or the complaint would be dismissed. (D.I. 10.) On July 11, 2001, the Court granted Plaintiff leave to proceed in forma pauperis and ordered him to pay \$3.60 as an initial partial filing fee within thirty days from the date the order was sent. (D.I. 15.) Plaintiff paid \$5.00 on July 11, 2001.

Once the in forma pauperis determination is made, a court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief pursuant

to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).¹ If a court concludes that a complaint comes within any of the exclusions listed in the statutes, the court will dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), courts apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Prob. and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997) (applying Rule 12(b)(6) standard as appropriate standard for dismissing a claim under § 1915A). Accordingly, a court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Further, pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355

¹ These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes a court to dismiss an in forma pauperis complaint at any time if the court finds the complaint to be frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires a court to screen prisoner complaints seeking redress from governmental entities, officers, or employees before docketing, if feasible, and to dismiss those complaints falling under the categories listed in § 1915A(b)(1).

U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has held that a complaint is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).² As discussed below, the Court concludes that most of Plaintiff's claims have no arguable basis in law or in fact and will be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) - 1915A(b)(1).

BACKGROUND

Plaintiff alleges that the Defendants, Raphael Williams and M. Jane Brady, have violated his constitutional rights under the First, Fifth, Eighth and Fourteenth Amendments. (D.I. 1 at 1.) Although Plaintiff's complaint is neatly written, the circumstances surrounding many of the alleged incidents are not fully explained. It appears that Plaintiff is, in essence, alleging that many of the events occurred because Defendant Williams was retaliating against Plaintiff for filing Moore v. Gander Hill Prison, C.A. No. 01-31-JJF (D. Del. dismissed July 22, 2003).

² Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub. L. No. 14-134, 110 Stat. 1321 (April 26, 1996).

First, Plaintiff alleges that on January 23, 2001, two light bulbs in his cell burned out and it took forty-five days to have them replaced. Plaintiff alleges that he asked "many" correction officers for replacements and they all claimed that they had put in repair orders. Plaintiff further alleges that he finally received replacements when a maintenance officer "by chance...carried extra bulbs." (D.I. 3 at 1b.) Plaintiff maintains that Defendant Williams deliberately caused him to be without the two light bulbs for forty-five days to intentionally deprive Plaintiff of reading and work light. (Id.)

Second, Plaintiff alleges that the prison business office did not make any payment to this Court when required regarding Plaintiff's initial partial filing fee. (Id. at 2b, 18-19b.)

Third, Plaintiff alleges that after filing this complaint, his law library assistance "steadily deteriorated." (Id.) Furthermore, Plaintiff alleges that he was prevented from receiving "mimeographed" copies. (Id. at 4b.)

Fourth, Plaintiff alleges that he was prevented from receiving several books which were over one thousand pages long. (Id. at 4b, 11b, 19-20b.) This claim was the basis of Plaintiff's complaint in Moore v. Gander Hill Prison, C.A. No. 01-031-JJF (D. Del. dismissed July 22, 2003).

Fifth, Plaintiff alleges that when he was admitted to the MPCJF his personal belongings were taken from him, including his

legal documents. Plaintiff alleges that the Information regarding the charges that led to his incarceration was taken from him. (Id. at 5b.) Plaintiff appears to be alleging that his right to access the courts was violated.

Sixth, Plaintiff alleges that prior to April 2, 2001, he ordered a new battery for his watch, and took the watch apart in anticipation of receiving the battery. (Id. at 6b.) Plaintiff further alleges that on April 2, 2001, the battery arrived, but he had not yet received it when his cell was searched. Plaintiff alleges that a member of the search team confiscated his dismantled watch as contraband, even though prior searches had not resulted in his watch being taken. (Id.)

Seventh, Plaintiff alleges that Defendant Williams began moving him from unit to unit within the MPCJF in an effort to prevent him from prosecuting this case and to get him into trouble. (Id. at 7b.) Plaintiff also alleges that as a result of being moved around, he did get in trouble and ended up in the "Hole as Warden planned!" (Id. at 8b.)

Eighth, Plaintiff alleges that he was assaulted by another inmate, Robert Mumford, on April 11, 2001. (Id. at 9b.) Plaintiff further alleges that Correctional Officer Chapple, who has not been named as a defendant, knew the assault was going to happen, yet took no steps to prevent it. (Id. at 10.) Plaintiff also alleges that Officer Chapple did nothing to stop the assault

and failed to identify Mumford as the assailant when the Quick Response Team ("QRT") arrived to stop the fight. (Id.)

Ninth, Plaintiff alleges that he was not provided with copies of the rules and regulations of the Department of Corrections, as required in Del. C. Ann. tit. 11 § 6535. (Id. at 12b.)

Tenth, Plaintiff alleges that Defendant Williams "lashed out" against him by refusing to assist him in filing charges against inmate Mumford, not taking any action regarding Plaintiff's injuries, losing Plaintiff's property, withholding legal work while in the Hole, making a "tuna lid" contraband, requiring Plaintiff to spend fifteen more days in the Hole, and, withholding self-addressed, stamped envelopes from Plaintiff's sister. (Id. at 13-14b.)

Eleventh, Plaintiff alleges that Defendants have violated his Fourteenth Amendment Due Process Rights regarding the disciplinary procedures at the MPCJF. (Id. at 15-18b.)

Plaintiff requests the Court to require Defendants to allow him to receive all future correspondence regarding this case directly from the post office. (D.I. 2 at 2.) He further requests that he be allowed to receive "any and all future books, articles, or information prospectively related herein set forth, or those serving to enhance, promote, expedite or presume any legal function..." (Id.) Plaintiff also requests that the Court

order Defendants to furnish him with his Black's Law Dictionary and the Ultimate PC Hardware Handbook. (Id. at 3.) Plaintiff further requests that the Court order Defendants to allow him to possess his own portable compact typewriter/wordprocessor. (Id. at 4.) Next, Plaintiff requests that he be allowed to have personal equipment in his cell. (Id. at 5.) He also requests that he be allowed "immediate uninhibited access to the East Side law library upon request and no less than [sic] 3 days a week." (Id. at 6.) Plaintiff further requests that the law library assistant be ordered to "properly provide requested information [sic] and notary as needed." (Id.) Plaintiff also requests that the Court order Defendants to leave him "peacefully in same given pod and cell." (Id. at 7.) Next, Plaintiff requests the Court to enjoin Defendants from preventing pretrial detainees from having adequate access to "published literatures, art forms, educational materials and legal information as prescribed by laws of the land." (Id.) Finally, Plaintiff requests that the Court fine Defendants, a request the Court construes as a claim for pecuniary damages against Defendants. (Id. at 8-9.) Because Plaintiff has been released from confinement, Plaintiff's requests for relief, with the exception of his request for damages, are moot.

DISCUSSION

I. Plaintiff's Claims Against Defendant Brady

Plaintiff has failed to assert any specific facts regarding Defendant Brady's alleged unconstitutional conduct. In the Third Circuit, a complaint under § 1983 must set forth specific facts regarding the defendant's alleged unconstitutional conduct. See Darr v. Wolfe, 767 F.2d 79, 80 (3d Cir. 1985) (collecting cases).

Plaintiff's complaint, as presented, is "lacking in specific facts to support his conclusory claim[s]" against Defendant Brady. Id. at 81. Consequently, Plaintiff's claims have no arguable basis in law or in fact. Therefore, Plaintiff's claims against Defendant Brady will be dismissed as frivolous without prejudice pursuant to §§ 1915(e)(2)(B)-1915A(b)(1).

II. Res Judicata

It appears that Plaintiff has raised substantially the same claim regarding the denial of books over one thousand pages as he did in Moore v. Gander Hill Prison, CA No. 01-031-JJF (dismissed July 22, 2003). This Court has the authority to apply the doctrine of res judicata or claim preclusion sua sponte. See Hawkins v. Risley, 984 F.2d 321, 324 (9th Cir. 1992). Res judicata or claim preclusion ensures "a final judgment on the merits of an action [and] precludes the parties or their privies from re-litigating issues that were or could have been raised in that action." Allen v. McCurry, 449 U.S. 90, 94 (1980).

Identical to his allegations in Moore v. Gander Hill Prison, in the instant action, Plaintiff alleges that his constitutional rights were violated because he was denied several books over one thousand pages. Here, as in his previous lawsuit, Plaintiff alleges that he was notified that he could not have books over one thousand pages and that the books were not returned to the publisher. (D.I. 3 at 4b.)

There are four criteria courts use to determine whether successive lawsuits involve the same cause of action:

"(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same rights; and (4) whether the two suits arise out of the same transactional nucleus of facts."

Acuna v. Cambra, No. 95-4575-VRW, 1996 WL 40182 *2 (N.D. Cal. Jan. 29, 1996) (citing C.D. Anderson & Co., Inc. v. Lemos, 832 F.2d 1097, 1100 (9th Cir. 1987); Constantini v. Trans World Airlines, 681 F.2d 1199, 1202 (9th Cir. 1982)). Courts have deemed the last of these criteria as "the most important." See id. (citing C.D. Anderson, 832 F.2d at 1100) (finding same cause of action solely on criteria that both suits arose out of the same transactional nucleus of facts); see also Hidden Cove Marina, Inc. v. Village of Fox Lake, No. 86-C-2742, 1986 WL 15266 *1 (N.D. Ill. Dec. 30, 1986).

First and foremost, Plaintiff's claim in the instant action

regarding the denial of his books and his previous complaint arise out of the same transactional nucleus of operative facts. The same evidence would be presented in both actions. Therefore, the Court concludes that Plaintiff's claim regarding the denial of books over one thousand pages is barred under the doctrine of res judicata or claim preclusion, and therefore, will be dismissed.

III. Plaintiff's Fourteenth Amendment Claims

Plaintiff has asserted two separate due process claims: 1) refusal to give him personal copies of the Department of Corrections rules and regulations; and, 2) unfair disciplinary procedures. Analysis of Plaintiff's due process claims begins with a determination of whether constitutionally protected liberty interests exist. Sandin v. Connor, 515 U.S. 472 (1995); Hewitt v. Helms, 459 U.S. 460 (1983). "Liberty interests protected by the Fourteenth Amendment may arise from two sources -- the Due Process Clause itself and the laws of the States." Hewitt, 459 U.S. at 466.

The Supreme Court has held that liberty interests protected by the Due Process Clause are limited to "freedom from restraint" which imposes "atypical and significant hardship in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. at 483-84. According to Sandin, courts focus on the nature of the deprivation, not the language in state laws or prison

regulations. Rienholtz v. Campbell, 64 F.Supp.2d 721 (W.D. Tenn. 1999). Here, Plaintiff's reliance on both the state statute and the prison regulations as evidence of a due process violation is misplaced. The denial of a personal copy of the prison rules and regulations and the disciplinary procedures in place, are "within the normal limits or range of custody [his] conviction authorizes the State to impose." Meachum v. Fano, 427 U.S. 215, 225 (1976).

Furthermore, courts have repeatedly determined that the Department of Corrections statutes and regulations do not provide prisoners with liberty or property interests protected by the Due Process Clause. Jackson v. Brewington-Carr, No. 97-270, 1999 U.S. Dist. LEXIS 535 (D. Del. Jan. 15, 1999) (holding that statutes and regulations governing the Delaware prison system do not provide inmates with a liberty interest in remaining free from administrative segregation or from a particular classification); Carrigan v. State of Delaware, 957 F.Supp. 1376 (D. Del. 1997) (holding that a prisoner had no constitutionally protected interest in a particular classification); Abdul-Akbar v. Dep't of Corrections, 910 F.Supp. 986 (D. Del. 1995) (holding that inmates have no "legitimate entitlement" to employment). Therefore, Plaintiff's claims that his rights to due process have been violated have no arguable basis in law. Accordingly, Plaintiff's due process claims will be dismissed as frivolous pursuant to §§ 1915(e)(2)(B)-1915A(b)(1).

IV. Plaintiff's First Amendment Claim

Plaintiff alleges that when he entered MPCJF, his legal documents regarding his criminal case were taken from him. The Court construes this to be a claim regarding Plaintiff's access to the courts. Prisoners must be allowed "adequate, effective and meaningful" access to the courts. Bounds v. Smith, 430 U.S. 817, 822 (1977) (holding that prisons must give inmates access to law libraries or direct legal assistance). In order to state a claim, a prisoner must show that his access to the courts was effectively impeded by the denial, not just that the denial was unreasonable. See Reynolds v. Wagnor, 128 F.3d 166, 183 (3d Cir. 1997) (holding that there is no First Amendment right to subsidized mail or photocopying).

Although Plaintiff alleges that his copy of the Information was taken from him upon entry into the prison, he has not alleged that he suffered any adverse consequences from this seizure. See id.; see also Johnson v. Moore, 948 F.2d 517, 521 (9th Cir. 1991) ("A denial of free photocopying does not amount to a denial of access to the courts."). Absent an allegation of how his access to the courts was adversely affected, the Court concludes that Plaintiff has not stated an actionable claim. However, the Court's dismissal of this claim will be without prejudice because it may be possible for Plaintiff to cure the deficiencies regarding this claim through amendment. Darr v. Wofle, 767 F.2d

79, 81 (3d Cir. 1985).

V. Plaintiff's Retaliation Claims Against Williams

To the extent Plaintiff is alleging that Defendant Williams has violated his constitutional rights by retaliating against him for filing a lawsuit in Moore v. Gander Hill Prison, his claim is not frivolous within the meaning of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS L. MOORE, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 01-330 JJF
 :
 RAPHAEL WILLIAMS, and :
 M. JANE BRADY, :
 :
 Defendants. :

ORDER

At Wilmington, this 19th day of February, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiff's claim against Defendant Brandy is **DISMISSED** without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1). Plaintiff is granted leave to amend the complaint regarding this claim within twenty (20) days from the date of this Memorandum Order, provided he can do so within the constraints of the Federal Rules of Civil Procedure. See Darr v. Wolfe, 767 F.2d 79, 81 (3d Cir. 1985).

2. Plaintiff's claim regarding the denial of books over one thousand pages is **DISMISSED** with prejudice on the grounds of res judicata.

3. Plaintiff's Fourteenth Amendment due process claims are **DISMISSED** as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

4. Plaintiff's First Amendment claim is **DISMISSED** as

frivolous without prejudice pursuant to 28 U.S.C. §§
1915(e) (2) (B)-1915A(b) (1) .

5. The Clerk shall mail a copy of this Memorandum Order to Plaintiff.

6. Pursuant to Fed. R. Civ. P. 4(c) (2) and (d) (2) ,
Plaintiff shall complete and return to the Clerk of the Court an
original "U.S. Marshal-285" form for the Defendant as well as for
the Attorney General of the State of Delaware, 820 N. FRENCH
STREET, WILMINGTON, DELAWARE, 19801, pursuant to Del. Code Ann.
tit. 10 § 3103(c) . **Additionally, Plaintiff shall provide the**
Court with one copy of the complaint (D.I. 1) , the memorandum
(D.I. 2) , and the affidavit (D.I. 3) for service upon the
Defendants. Further, Plaintiff is notified that the United
States Marshal will not serve the complaint until all "U.S.
Marshal 285" forms have been received by the Clerk of the Court.
Failure to provide the "U.S. Marshal 285" forms for each
Defendant within 120 days of this order may result in the
complaint being dismissed or Defendants being dismissed pursuant
to Federal Rule of Civil Procedure 4(m) .

7. Upon receipt of the form(s) required by paragraph 6
above, the United States Marshal shall forthwith serve a copy of
the complaint (D.I. 1), the memorandum (D.I. 2), the affidavit
(D.I. 3), this Memorandum Order, a "Notice of Lawsuit" form, the
filing fee order(s), and a "Return of Waiver" form upon each of
the Defendants so identified in each 285 form.

8. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a Defendant, the United States Marshal shall personally serve said Defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said Defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

9. Pursuant to Fed. R. Civ. P. 4(d)(3), a Defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date upon which the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a Defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

10. No communication, including pleadings, briefs, statements of position, etc., will be considered by the Court in this civil action unless the documents reflect proof of service upon the parties or their counsel. The Clerk is instructed not

to accept any such document unless accompanied by proof of
service.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE