

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DANA WILLIAMS, :
 :
 Plaintiff, :
 :
 v. : Civil Action 01-632-JJF
 :
 ROBERT SNYDER, BETTY BURRIS, :
 LARRY MC GUIGAN, and :
 NURSE ROSEMARY :
 Defendants. :

Dana Williams, Pro Se, Smyrna, Delaware.

Stuart B. Drowos, Esquire, DEPARTMENT OF JUSTICE, STATE OF
DELAWARE, Wilmington, Delaware.
Attorney for Defendants Robert Snyder, Betty Burris and Larry
McGuigan.

MEMORANDUM OPINION

September 30, 2002
Wilmington, Delaware.

FARNAN, District Judge.

Presently before the Court is a Motion To Dismiss (D.I. 13) filed by State Defendants Robert Snyder, Betty Burris and Larry McGuigan (collectively "State Defendants"). Plaintiff, Dana Williams, an inmate at the Delaware Correctional Center ("DCC"), filed the instant action pursuant to 42 U.S.C. § 1983 (D.I. 2). In his Complaint, Plaintiff alleges Eighth Amendment and Fourteenth Amendment violations. (D.I. 2). For the reasons discussed below, State Defendants' Motion To Dismiss will be granted.

BACKGROUND

Plaintiff Dana Williams is an inmate at the D.C.C. in Smyrna, Delaware. (D.I. 14 at 1). Defendants Snyder, Burris and McGuigan are wardens for the D.C.C. (D.I. 18 at 5). Nurse Rosemary Leager is an employee of Correctional Medical Services ("CMS"), the current health care provider responsible for staffing personnel who diagnose and treat the medical needs of inmates at DCC. (D.I. at 3). Plaintiff alleges that "Nurse Rosemary" gave out the wrong medications and discriminated against non-white inmates. (D.I. 2 at 4). Further, Plaintiff claims that State Defendants knew of Ms. Leager's habit of giving out wrong medications to inmates and discrimination against non-white inmates and did nothing to prevent this behavior resulting

in a violation of 42 U.S.C. § 1983. (D.I. 2 at 4). State Defendants filed a Motion to Dismiss (D.I. 13) for failure to state a claim upon which relief may be granted.

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. 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 must 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 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).

I. Failure To Provide Adequate Medical Care

By his Complaint, Plaintiff alleges that Nurse Rosemary Leager repeatedly gave out the wrong medication. (D.I. 2 at 3-4).

Plaintiff further alleges that Ms. Leager gave snacks to non-diabetics that were specifically intended for diabetics. (D.I. 2 at 4). Also, Plaintiff claims that State Defendants became aware of Ms. Leager's behavior but did nothing to prevent her discriminatory actions. (D.I. 2 at 4).

To establish a claim for failure to provide adequate medical care, "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). In order to satisfy the deliberate indifference standard set forth in Estelle, a plaintiff must allege that the Defendants either acted with "reckless disregard" or "actual intent" to disregard medical conditions. Id. In order to prove "deliberate indifference" a plaintiff must show that the individual attending him consciously disregarded his serious medical condition. Farmer v. Brennan, 511 U.S. 825, 838 (1994). Further, the medical condition must be "serious". Boring v. Kozakiewicz, 833 F.2d 468, 472 (3d Cir. 1987), cert. denied, 485 U.S. 991 (1988).

In this case, even accepting the Plaintiff's allegations as true, the Court concludes that the act of giving the wrong medication does not rise to the level of deliberate indifference. Therefore, knowledge that Ms. Leager was administering the wrong medication does not constitute deliberate indifference to Plaintiff's serious medical condition sufficient to sustain a

constitutional violation. A mistake in administering medication is more appropriately recoverable in negligence rather than a § 1983 action. See e.g. Frost v. Agnos, 152 F.3d 1124 (9th Cir. 1998) (finding no merit in medical administrative delay claims that were merely negligence). Accordingly, the Court concludes that State Defendants' Motion to Dismiss (D.I. 13) should be granted.

Defendants also contend that Plaintiff has not stated a cause of action supporting a 42 U.S.C § 1983 violation because Plaintiff has not shown Defendants' affirmative involvement in the alleged wrong. (D.I. 13 at 5-6). In order to assert a § 1983 violation based on the State Defendants' supervisory status Plaintiff would have to prove Defendants' personal involvement in the alleged wrong. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d. Cir. 1988). According to the instant Complaint (D.I. 2), Plaintiff does not claim that State Defendants were affirmatively involved in the alleged wrongs. Rather Plaintiff asserts that Defendants acquiesced in the actions.

The Court concludes that State Defendants were not personally involved in the alleged wrongs and therefore, the Plaintiff has failed to state a claim for a 42 U.S.C. §1983 violation. Thus, State Defendants' Motion to Dismiss will be granted.

Plaintiff claims that he is also suing all Defendants in

their individual capacities. (D.I. 15 at 5). Defendants contend that Plaintiff's Complaint, as it pertains to them individually, should be dismissed pursuant to the doctrine of qualified immunity. (D.I. 14 at 6). Under the doctrine of qualified immunity, government officials performing discretionary functions are immune from liability for damages provided that their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In this case the Court concludes that the State Defendants were performing a discretionary function , i.e. investigating and processing prison grievances, and their actions, even if Plaintiffs allegations are accepted as true, did not violate a clearly established constitutional right. Therefore the Defendants' Motion to Dismiss the Plaintiff's Complaint against the State Defendants in their individual capacities will be granted.

II. Equal Protection Claim

Plaintiff by his Complaint, claims that white inmates receive better treatment than non-white inmates. (D.I. 2 at 4). Defendants respond by claiming that Plaintiff has not shown any discriminatory intent or purpose as required by the Equal Protection Clause. (D.I. 14 at 4). Additionally, Defendants contend that, even if State Defendants were aware of Ms. Leager's alleged views, there is no evidence that Plaintiff or any non-

white inmates were denied medical care due to their race. (D.I. 14 at 4).

Pursuant to the Equal Protection Clause of the Fourteenth Amendment persons who are similarly situated should be treated in the same manner. See City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). A Plaintiff asserting an equal protection claim is required to offer proof of racially discriminatory intent or purpose as a motivating factor in the action. See Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 265, 266 (1977). The Court concludes that Plaintiff has pled no facts in support of a racially discriminatory intent or purpose on the part of the State Defendants. Therefore, the allegations in the instant Complaint do not rise to the level of an equal protection violation against the Defendants in their official capacities. Additionally, Plaintiff's claims against Defendants in their individual capacities are barred by the doctrine of qualified immunity. Thus, the State Defendants' Motion to Dismiss (D.I. 13) will be granted in all respects.

CONCLUSION

For the reasons discussed, State Defendants' Motion to Dismiss (D.I. 13) will be granted. Further, Plaintiff's Motion for Appointment of Counsel (D.I. 16) and Defendant's Motion for a Protective Order (D.I. 17) will be denied as moot.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DANA WILLIAMS, :
 :
 Plaintiff, :
 :
 v. : Civil Action 01-632-JJF
 :
 ROBERT SNYDER, BETTY BURRIS, :
 LARRY MC GUIGAN, and :
 NURSE ROSEMARY :
 Defendants. :

O R D E R

NOW THEREFORE, for the reasons discussed in the
Memorandum Opinion issued this date, IT IS HEREBY ORDERED this
30th day of September 2002 that:

- (1) Defendants' Motion to Dismiss (D.I. 13) is **GRANTED**;
- (2) Plaintiff's Motion for Appointment of Counsel (D.I.
16) is **DENIED** as moot;
- (3) Defendant's Motion for a Protective Order (D.I. 17)
is **DENIED** as moot.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE