IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

DARREN LAMONT SEAWRIGHT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 02-083-KAJ
	)	
ROBERT SNYDER, THOMAS CARROLL, LAWRENCE MCGUIGAN, and JOSEPH BELANGER,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

I. STANDARD OF REVIEW

Plaintiff Darren Lamont Seawright ("Seawright"), SBI #400140, is a pro se litigant who is presently incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. Seawright 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.

Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the Court must determine whether Seawright is eligible for pauper status. The Court granted Seawright leave to proceed in forma pauperis on January 31, 2002, and ordered Searwright to pay $5.00 as an initial partial filing fee within thirty days or, the complaint would be dismissed. Seawright paid the $5.00 initial partial filing fee on March 4, 2002.

Once the pauper determination is made, the 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 the Court finds Seawright's complaint falls under any one of the exclusions listed in the statutes, then the Court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the Court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Prob. & Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997)(applying Rule 12(b)(6) standard as appropriate standard for dismissing claims under § 1915A). Accordingly, the 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). 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 U.S. 41, 45-46 (1957)).

The United States Supreme Court has held that § 1915(e)(2)(B)'s term "frivolous" when applied to a complaint, "embraces not only the inarguable legal conclusion, but also the fanciful

[1] These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the Court to dismiss an in forma pauperis complaint at any time, if the Court finds the complaint 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. Section 1915A(a) requires the Court to screen prisoner in forma pauperis 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).

factual allegation." Neitzke v. Williams, 490 U.S. 319, 325 (1989).[2] Consequently, a claim is frivolous within the meaning of § 1915(e)(2)(B) if it "lacks an arguable basis either in law or in fact." Id. As discussed below, Seawright's Fourteenth Amendment Due Process claim and Fifth Amendment Double Jeopardy claim have no arguable basis in law or in fact, and shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

A. The Complaint

Seawright alleges that Robert Snyder ("Snyder"), Thomas Carroll ("Carroll"), Lawrence McGuigan ("McGuigan") and Joseph Belanger ("Belanger") have violated his constitutional rights under the Fifth, Eighth and Fourteenth Amendments. (D.I. 2 at 3) Specifically, Seawright alleges that on March 30, 2001, he was removed from the general population and placed in the Medium Security Housing Unit ("MHU") for refusing to complete the Greentree Drug Treatment Program. (Id. at 5) Seawright also alleges that his failure to complete the drug program is a violation of a court order, not a Department of Correction ("DOC") regulation. (Id.) Seawright further alleges that by classifying him to the MHU, the defendants have punished him without filing charges against him. (Id.)

Next, Seawright alleges that on March 31, 2001, he was removed from the MHU and placed in the Security Housing Unit ("SHU") for refusing to sign a form "claiming responsibility for a T.V. that was in the cell Plaintiff was placed, [sic] Plaintiff was beaten about the head, face

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[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 frivolous under the prior section remain applicable. See § 804 of the PLRA, Pub. L. No. 14-134, 110 Stat. 1321 (April 26, 1996).

and body until he signed by Deputy Warden Lawrence A. McGuigan and Captain Joseph H. Belanger. Plaintiff signed the form and was placed in the 'SHU' pending a Housing Status Classification 'HSC' review in 90 days...." (Id. at 6) Seawright alleges that a counselor told him he was placed in the SHU because of his previous write-ups. (Id.) Seawright further alleges that he was held accountable for the previous write-ups while he was in the general population, and to use them as a basis for his classification constitutes Double Jeopardy. (Id.) Seawright also alleges that he wrote to Snyder and Carroll to complain about his unjust classification. (Id. at 6-7) Seawright requests that he be immediately removed from the SHU and placed back in the general population. (Id. at 4) He also requests that the Court hold the defendants financially liable, which the Court construes as a request for damages. (Id.)

B. Analysis

1. Seawright's Due Process Claim

Seawright alleges that he was unjustly removed from the general population and placed in disciplinary custody in violation of his Fourteenth Amendment right to Due Process. (D.I. 2) Analysis of Seawright's Due Process claim begins with determining whether a constitutionally protected liberty interest exists. 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 v. Helms, 459 U.S. at 466. The Supreme Court has explained 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.

In determining whether an inmate has suffered an "atypical and significant hardship" as a result of his confinement, the Court must consider two factors: "1) the amount of time the prisoner was placed into disciplinary segregation, and 2) whether the conditions of his confinement in disciplinary segregation were significantly more restrictive than those imposed on other inmates in solitary confinement." Shoats v. Horn, 213 F.3d 140, 144 (3d Cir. 2000)(citing Sandin, 515 U.S. at 486). "Given the considerations that lead to transfers to administrative custody of inmates at risk from others, inmates at risk from themselves and inmates deemed to be security risks, etc., one can conclude with confidence that stays of many months are not uncommon." Griffin v. Vaughn, 112 F.3d 703, 708 (3d Cir. 1997). See also Torres v. Fauver, 292 F.3d 141, 151 (3d Cir. 2002)(finding no protected liberty interest where prisoner was held in disciplinary detention for 15 days and administrative segregation for 120 days); Smith v. Mensinger, 293 F.3d 641, 654 (3d Cir. 2002) (determining that seven months in disciplinary confinement did not infringe a protected liberty interest).[3]

In Mitchell v. Horn, 318 F.3d 523, 528, (3d Cir. 2003), the district court dismissed the plaintiff's Fourteenth Amendment Due Process claim sua sponte, finding that is was frivolous. The plaintiff, Mitchell, was found guilty of possessing contraband and of lying to a prison employee. He was sentenced to disciplinary confinement for a period of ninety days. While his appeal was pending, Mitchell was placed in a cell "normally used to house mentally ill inmates. The cell had 'human waste smeared on the walls' and was 'infested with flies.' At night, 'kicking and banging on the doors by the other inmates' kept Mitchell awake." Mitchell v. Horn, 318

[3] The only case where the Third Circuit found an atypical and significant hardship was Shoats v. Horn, 213 F.3d 140 (3d Cir. 2000), where the prisoner had been held in solitary confinement for eight years.

F.3d at 527. During the four days he was confined to this cell, Mitchell alleged that he did not eat, drink or sleep. Id. The Third Circuit reversed and remanded the case, finding the record to be too sparse for the "fact specific nature of the Sandin test." Id. at 532. However, this case is distinguishable from Mitchell. Seawright does not allege that the conditions of his confinement are unconstitutional. Moreover, Seawright has not alleged that his confinement to disciplinary custody was "significantly more restrictive then [that] imposed" on other inmates in either the MHU or SHU. Shoats v. Horn, 213 F.3d at 144. Here, Seawright merely alleges that his transfer from the general population to disciplinary custody is unconstitutional. "Under Sandin an administrative sentence of disciplinary confinement, by itself, is not sufficient to create a liberty interest, and Smith does not claim that another constitutional right ... was violated." Smith v. Mensinger, 293 F.3d at 653.

Furthermore, "Sandin instructs that whether the restraint at issue 'imposes atypical and significant hardship' depends on the particular state in which the plaintiff is incarcerated." Torres v. Fauver, 292 F.3d at 151. This Court has repeatedly determined that the Department of Correction 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 Delaware prison system do not provide inmates with 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 prisoner has no constitutionally protected interest in a particular classification). The Court concludes that Seawright's classification to both the MHU and the SHU is "within the normal limits or range of custody [his] conviction authorizes the State to

impose." Meachum v. Fano, 427 U.S. 215, 225 (1976). Consequently, Seawright's claim that the defendants violated his Fourteenth Amendment right to Due Process has no arguable basis in law. Therefore, Seawright's Fourteenth Amendment Due Process claim shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

2. Seawright's Double Jeopardy Claim

Seawright argues that, by using prior disciplinary "write-ups" as a basis for his classification, the Defendants have unconstitutionally subjected him to Double Jeopardy. (D.I. 2 at 7) Seawright's argument is without merit. The Third Circuit has held that a prison disciplinary hearing is not a "prosecution" for Double Jeopardy Clause purposes. United States v. Newby, 11 F.3d 1143, 1144 (3d Cir. 1993) (citing United States v. Stucky, 441 F.2d 1104 (3d Cir. 1971)). Therefore, a prisoner may be disciplined for violating a DOC regulation in order to maintain institutional order, and subsequently be prosecuted for the same criminal conduct. Id. If there is no constitutional violation when prosecuting a prisoner after he has been disciplined by the DOC for the same institutional infraction, then there clearly is no constitutional violation when using prior disciplinary actions as a basis for classifying a prisoner to a higher security level. Newby, 11 F.3d at 1144. Consequently, Seawright's Double Jeopardy claim has no arguable basis in law or in fact, and Seawright's Fifth Amendment Double Jeopardy claim must be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

3. Seawright's Excessive Force Claim

Seawright's remaining Eighth Amendment claim against Defendants McGuigan and Belanger for excessive use of force is not frivolous within the meaning of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(a), and he will therefore be permitted to further pursue this claim.

NOW THEREFORE, this 16th day of November, 2004, IT IS HEREBY ORDERED that:

1. Seawright's Fourteenth Amendment Due Process claim against defendants Snyder, Carroll, McGuigan and Belanger is DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

2. Seawright's Fifth Amendment Double Jeopardy claim against defendants Snyder, Carroll, McGuigan and Belanger is DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

IT IS FURTHER ORDERED that:

1. The Clerk of the Court shall cause a copy of this Memorandum Order to be mailed to Seawright.

2. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), Seawright shall complete and return to the Clerk of the Court an **original** "U.S. Marshal 285" form for **Defendants Belanger and McGuigan, as well as for the Attorney General of the State of Delaware**, pursuant to DEL. CODE ANN. tit. 10 § 3103(c). **Additionally, the plaintiff shall provide the Court with one copy of the complaint for service upon each defendant. Furthermore, the 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 and the attorney general 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).**

3. Upon receipt of the forms required by paragraph 2 above, the United States Marshal shall forthwith serve a copy of the Complaint (D.I. 2), 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.

4. 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.

5. 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 on which the Complaint, this Memorandum Order, the "Notice of Lawsuit" form, and the "Return of Waiver" form is 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.

6. No communication, including pleadings, briefs, statement 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 of the Court is instructed not to accept any such document unless accompanied by proof of service.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware