IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ORIN TURNER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 02-145-KAJ
	)	
LINDA TEZAC, and LT. PORTER,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

Plaintiff Orin Turner ("Turner"), SBI # 183819, is a pro se litigant who is presently incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. 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.

I. STANDARD OF REVIEW

Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the Court must determine whether Turner is eligible for pauper status. The Court granted Turner leave to proceed in forma pauperis on February 20, 2002. On March 21, 2002, the Court ordered him to pay $8.45 as an initial partial filing fee within thirty days or, the Complaint would be dismissed. Turner paid the $8.45 initial partial filing fee on April 18, 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 Turner'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 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)(citing Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993)). 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 when "it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Haines v. Kerner, 404 U.S. 519, 520-521 (1972)(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 factual allegation." Neitzke v. Williams, 490 U.S. 319, 325 (1989).[2] Consequently, a claim is

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[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).

[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).

"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, Turner's claims 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

Turner alleges that Linda Tezac ("Tezac") and Lt. Porter ("Porter") have violated his constitutional rights under the Fourth, Ninth and Fourteenth Amendments. (D.I. 2 at 3) Specifically, Turner alleges that he was placed in pre-hearing detention on January 8, 2002, and removed from isolation on January 22, 2002. (Id.) Turner further alleges that after he was removed from isolation, he was classified to the Security Housing Unit ("SHU") rather than being returned to his original status. (Id.) This appears to be the crux of Turner's complaint, as he requests that he be awarded compensatory damages for the "emotional damage to me while housed in the S.H.U." (Id. at 4) Turner incorrectly bases his claim on the Fourth and Ninth Amendments, as well as the Fourteenth Amendment. (Id. at 3) Nonetheless, the Court will treat Turner's claim as one raised under the Fourteenth Amendment Due Process Clause.

B. Analysis

1. Turner's Due Process Claim

Turner claims in effect that Tezac and Porter caused him to be classified to the SHU in violation of his Fourteenth Amendment right to Due Process. (D.I. 2 at 3) Analysis of Turner'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).

"[L]iberty interest[s] 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 on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. at 484. 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.

[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.

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 an banging on the doors by the other inmates' kept Mitchell awake." Mitchell v. Horn, 318 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. Turner does not allege that the conditions of his confinement are unconstitutional. Moreover, Turner has not alleged that his confinement to disciplinary custody was "significantly more restrictive then [that] imposed" on other inmates in the SHU. Shoats v. Horn, 213 F.3d at 144. Here, Turner 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 [Turner] 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 141, 151 (3d Cir. 2002). 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). Thus, after Sandin, a prisoner has no constitutional right to any procedural safeguards -- regardless of what state statutes or regulations provide -- unless the deprivation complained of imposed an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin, 515 U.S. at 484. Because Turner does not allege that he was placed in disciplinary custody which caused an "atypical and significant hardship," his claim that Tezac and Porter violated his Fourteenth Amendment right to Due Process has no arguable basis in law or in fact. Therefore, Turner'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. Plaintiff's Request for Damages Based on "Emotional Pain"

Turner does not allege that he suffered any physical injury. Rather, Turner alleges that his injuries are "emotional." (D.I. 2 at 4) Nonetheless, Turner requests compensatory damages. (Id.) Section 1997e(e) of the PLRA, entitled "Limitation on Recovery," provides:

> No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

The Third Circuit has held that "[u]nder § 1997e(e), ... in order to bring a claim for mental or emotional injury suffered while in custody, a prisoner must allege physical injury..." Allah v. All-Hafeez, 226 F.3d 247, 250 (3d Cir. 2000). However, the Allah Court also construed the plaintiff's complaint as containing a claim for nominal damages and found that claims for nominal damages to vindicate a constitutional right are not barred under § 1997(e)e. Id. at 252.

This case is distinguishable from Allah, however, in that Turner's claim against Tezac and Porter has no arguable basis in law or in fact. Turner therefore cannot recover damages, nominal or otherwise, for his alleged "emotional damage." See Ostrander v. Horn, 145 F.Supp.2d 614, 619 (M.D. Pa. May 11, 2001)(finding that plaintiff failed to sufficiently allege any violation of his constitutional rights and therefore, not entitled to either compensatory or nominal damages for his emotional distress). Turner's request for compensatory damages based on his "emotional damage" is thus barred by 28 U.S.C. § 1997(e)e.

NOW THEREFORE, this 4th day of January, 2005, IT IS HEREBY ORDERED that:

1. Turner's Fourteenth Amendment Due Process claim against Tezac and Porter is dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

2. Turner's request for compensatory damages based on "emotional damage" is barred pursuant to 28 U.S.C. § 1997(e)e.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE