IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HILLARD M. WINN, Plaintiff, v. STATE OF DELAWARE DEPARTMENT OF CORRECTIONS, CORRECTIONAL MEDICAL SERVICES, GEORGE DIXON, STANLEY W. TAYLOR, JAMES PATTERSON, TOM CARROLL, ROBERT MAY, MICHAEL WELCOME, LAWRENCE MCGUIGAN, LISA M. MERSON, BETTY BURRIS, GEORGIA PURDUE, CHARLES CUNNINGHAM, DR. WISE, DAVID HOLMAN, DEE DEE CARROLL, JOSEPH H. BELANGER, MS. SAVAGE, Defendants.	)	Civil Action No. 02-34

MEMORANDUM OPINION

Hillard M. Winn, SBI #152383, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware, 19977, *pro se*.

Stuart B. Drowos, Esq., Department of Justice, State of Delaware, 820 N. French Street, 8th Floor, Carvel Office Building, Wilmington, Delaware, 19801, counsel for defendants State of Delaware Department of Corrections, George Dixon, Stanley W. Taylor, James Patterson, Tom Carroll, Robert May, Michael Welcome, Lawrence McGuigan, Lisa M. Merson, Betty Burris, Charles Cunningham, David Holman and Joseph H. Belanger.

Kevin J. Connors, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, 1220 N. Market St., Suite 500, P.O. Box 130, Wilmington, Delaware, 19899, counsel for defendant Dee Dee Carroll.

September 30, 2003
Wilmington, Delaware

JORDAN, District Judge

I. INTRODUCTION

Presently before the court are two motions to dismiss, one filed by defendants State of Delaware Department of Corrections, George Dixon, Stanley W. Taylor, James Patterson, Tom Carroll, Robert May, Michael Welcome, Lawrence McGuigan, Lisa M. Merson, Betty Burris, Charles Cunningham, David Holman and Joseph H. Belanger (collectively, "State Defendants") (Docket Item "D.I." 48) and the other filed by defendant Dee Dee Carroll (D.I. 70). Also before the court are plaintiff's motion for temporary restraining order (D.I. 29), motion for discovery (D.I. 57), motion for hearing (D.I. 58) and motion to extend time to serve certain defendants (D.I. 59) and State Defendants' motion for protective order (D.I. 61). For the reasons set forth below, the court will grant the motions to dismiss, deny plaintiff's motions as moot and deny State Defendants' motion for a protective order as moot.

II. BACKGROUND

On January 14, 2002, plaintiff filed a complaint pursuant to 42 U.S.C. § 1983 against the State of Delaware Department of Corrections ("DOC") and several prison officials, officers and employees at the Delaware Correctional Center ("DCC"). (D.I. 2.) The allegations contained in plaintiff's complaint do not arise out of one set of operative facts. Rather, plaintiff describes as the basis of his claims several incidents that appear to have occurred while he was incarcerated at the DCC between September 2000 and October 2001.

Plaintiff alleges that State Defendants have violated his rights under the Eighth

and Fourteenth Amendments of the United States Constitution and acted with excessive force, deliberate indifference and negligently with respect to his medical needs. On August 16, 2002, State Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 48.) Plaintiff filed a response to State Defendants' motion on September 30, 2002 (D.I. 51) to which State Defendants replied on October 21, 2002 (D.I. 56).

Plaintiff also alleges that Dee Dee Carroll[1] acted negligently and with deliberate indifference to his medical needs by causing him to become addicted to Valium (D.I. 2 ¶ 47) and subsequently stopping his Valium medication on September 2, 2000 (D.I. 2 ¶ 9, 14). Plaintiff further alleges that Ms. Carroll denied him his right to due process under the Fourteenth Amendment by not giving him notice prior to stopping his Valium medication. (D.I. 2 ¶ 21). On April 17, 2003, Ms. Carroll filed a motion to dismiss (D.I. 70) pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), to which plaintiff responded on July 1, 2003 (D.I. 74).

This is the court's decision on both motions to dismiss.

III. STANDARD OF REVIEW

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the factual allegations contained in the complaint must be accepted as true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (*per curiam*). This is especially true where, as here, the complaint is filed *pro se*. *Estelle v. Gamble,* 429 U.S. 97, 106 (1976) (citations omitted). A *pro se* complaint can only be dismissed for failure to state a claim if it

[1]Defendant Dee Dee Carroll is properly known as "Daphne Carroll." (D.I. 70 at 1.)

appears "beyond doubt that a plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). However, broad, unsupported allegations do not preclude dismissal and do not constitute a cause of action. *Signore v. City of McKeesport*, 680 F. Supp. 200, 203 (W.D. Pa. 1988), *aff'd*, 877 F.2d 54 (3d Cir. 1989).

IV. DISCUSSION

1. State Defendants' Motion to Dismiss

State Defendants argue that plaintiff's complaint does not present sufficient factual allegations to support plaintiff's claims of constitutional violations under the Eighth and Fourteenth Amendments and therefore the complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6). (D.I. 49 ¶¶ 2,5.) According to Federal Rule of Civil Procedure 12(b)(6), if a motion to dismiss for failure to state a claim upon which relief can be granted presents matter outside the pleading to the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. Fed. R. Civ. P. 12(b)(6). Because State Defendants included affidavits from several prison officers as exhibits (D.I. 49 at A1-A55), the court will treat State Defendants' motion to dismiss as a motion for summary judgment under Federal Rule of Civil Procedure 56.[2]

Plaintiff alleges that State Defendants acted with deliberate indifference to his

[2]Federal Rule of Civil Procedure 56(e) states that "when a motion for summary judgment is made and supported [by sworn affidavits], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response...must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56(e).

medical needs in violation of his Eighth Amendment right to be free from cruel and unusual punishment. (D.I. 2 at 3, 4.) To sustain an action under 42 U.S.C. § 1983, plaintiff must prove that State Defendants were directly involved with plaintiff's medical care, as State Defendants cannot be held liable for the actions of the medical providers and medical personnel at the DCC.[3] *See Monell v. Dep't of Social Services*, 436 U.S. 658, 694 (1979) (*respondeat superior* may not be used in a § 1983 claim).

State Defendants assert that "[c]orrectional health care in Delaware is provided by an outside autonomous health care vendor" and that all decisions concerning plaintiff's medical treatment "are made by the treating medical/mental health professionals with whom the DOC has contracted." (D.I. 48 ¶ 7.) Plaintiff has not presented any facts to the contrary, nor has plaintiff presented any facts proving that the State Defendants named in his complaint were "directly involved" in his medical care, as required to sustain an action under 42 U.S.C. § 1983. Therefore, State Defendant's motion will be granted with respect to plaintiffs' claims that State Defendants violated his Eighth Amendment right to be free from cruel and unusual punishment by acting with deliberate indifference to his medical care.

Plaintiff alleges that he was subject to cruel and unusual punishment in violation of his Eighth Amendment rights when he was placed in "strip cell"[4] and deprived of all

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[3]Correctional Medical Systems ("CMS") was the medical provider employed by the State of Delaware Department of Corrections ("DOC") during the time period relevant to plaintiff's complaint. (D.I. 48 ¶ 7 f.n.1.) As of July 1, 2002, the Department of Corrections has contracted with a new health care provider, First Correctional Medical ("FCM"). (*Id.*)

[4]Inmates are placed on strip cell status for 24 hours when they display disruptive behavior. (D.I. 49 ¶ 8.) The cell is actually stripped save a combination sink/toilet and a

personal property. (D.I. 2 at 7, 8, 14.) When judging "a prison procedure that impinges on inmates' constitutional rights," the court must determine whether "the procedure is reasonably related to penological interest." *Turner v. Safely*, 482 U.S. 78, 89 (1987). One such legitimate penological interest is institutional security. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987).

Plaintiff's complaint contains factual allegations of his own misconduct. By his own admission, plaintiff has engaged in the following disruptive behavior: he has flooded his cell (D.I. 2 at 8), yelled obscenities at prison officers (D.I. 2 at 31), banged on the walls of his cell (D.I. 2 at 4), attempted suicide by cutting his wrist with a sharpened spoon (D.I. 2 at 10), thrown feces out of his cell (D.I. 2 at 17), threatened to commit suicide (D.I. 2 at 7) and thrown his food tray (D.I. 2 at 13). The court agrees with State Defendants' argument that "the security of the institution is placed in jeopardy every time an inmate displays destructive behavior." (D.I. 49 ¶ 8.)

Conditions of confinement amount to cruel and unusual punishment only where they "involve the wanton and unnecessary infliction of pain" or are "grossly disproportionate to the severity of the crime warranting imprisonment" or "deprive inmates of the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Plaintiff's misconduct, as described in his complaint, appears to be disruptive to the general prison population. Segregating plaintiff from the general

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locker. (*Id.*) The inmate is deprived of all personal property so as to prevent any further destruction of property in the cell. (*Id.*) While in strip cell, an inmate is given food, a mattress, blankets, and toiletries; however, these items are issued to the inmate when he actually needs them and when he is finished the items are immediately removed by DOC personnel. (*Id.*)

prison population and placing him on strip cell status as a result of his disruptive behavior is reasonably related to further the legitimate penological interest in institutional security. *See Turner*, 482 U.S. at 89; *O'Lone*, 482 U.S. at 348. Plaintiff has not presented any facts proving that State Defendants' placing him on strip cell status "involve[s] the wanton and unnecessary infliction of pain," *Rhodes*, 452 U.S. at 347, and therefore State Defendant's motion will be granted with respect to plaintiff's claims that State Defendants' use of the strip cell condition constitutes cruel and unusual punishment under the Eighth Amendment.

Plaintiff also claims that State Defendants used excessive force against him in violation of his Eighth Amendment right to be free from cruel and unusual punishment. "The Eighth Amendment's prohibition of 'cruel and unusual' punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort 'repugnant to the conscience of mankind.'" *Hudson v. McMillan*, 503 U.S. 1, 4 (1992) (citing *Whitley v. Albers*, 475 U.S. 312 (1986)). The court then must ask "whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause to harm." *Hudson*, 503 U.S. at 7. If force is applied maliciously and sadistically to cause harm, it is a violation of the Eighth Amendment's prohibition of cruel and unusual punishment. *Id.*

First, plaintiff has not demonstrated that he suffered more than a *de minimis* injury at the hands of any State Defendants.[5] Plaintiff's allegations of physical injury

[5]Plaintiff alleges that State Defendant Cunningham "entered his cell and swung him around with a traveling chain causing plaintiff's head to be banged against the walls." (D.I. 2 at 31.) However, plaintiff does not provide any evidence to substantiate this allegation, i.e., documentation of medical treatment for the incident, nor does he

arise from incidents where he was removed from his cell in shackles and restraints by the DCC Quick Response Team ("QRT"). Such actions by the QRT were necessitated by plaintiff's disruptive behavior and amounted to no more than cuffing plaintiff's feet and hands behind his back. (D.I. 2 at 27.) Plaintiff has not presented any facts to prove that he suffered more than a *de minimis* injury. Second, nothing in plaintiff's complaint proves that force was applied maliciously and sadistically; rather, State Defendants and the QRT acted to "maintain institutional security and preserv[e] internal order and discipline," not for any malicious or sadistic purpose. *See Bell v. Wolfish*, 441 U.S. 520, 546 (1988). Therefore, State Defendant's motion will be granted with respect to plaintiff's claims that State Defendants acted with excessive force in violation of his Eighth Amendment rights.

Finally, plaintiff claims that State Defendants deprived his Fourteenth Amendment right to due process when he was placed on strip cell status and removed from the general prison population without prior notice. (D.I. 2 at 16.) In order to prove a violation of the Due Process clause, plaintiff must show that (1) a constitutionally protected liberty or property interest is at issue and (2) that the state provided constitutionally insufficient procedures in its deprivation. *Board of Regents v. Roth*, 408 U.S. 564 (1972).

Under the Due Process Clause, a prisoner does not have a liberty interest in

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provide a date on which this alleged incident occurred. Such an unsupported allegation does not constitute a cause of action. *Signore*, 680 F. Supp. at 203, *aff'd*, 877 F.2d 54 (3d Cir. 1989).

remaining in the general prison population.[6] *Hewitt v. Helms,* 459 U.S. 460, 468 (1983). Because plaintiff does not have a constitutionally protected liberty interest at issue, plaintiff's claims under the Fourteenth Amendment will be dismissed.[7]

2. Dee Dee Carroll's Motion to Dismiss

Ms. Carroll argues that plaintiff's complaint should be dismissed with respect to her pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. Specifically, Ms. Carroll argues that dismissal is proper because plaintiff has failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act of 1996.[8] Under the Prison Litigation Reform Act of 1996, an inmate must first exhaust all of the administrative remedies available to him prior to filing an action under 42 U.S.C. § 1983 premised upon prison conditions. *Nyhuis v. Reno*, 204 F.3d 65, 67 (3d Cir. 2000). Prison conditions include the environment in which the prisoners live, the physical conditions of that environment and the nature of the services provided therein. *Booth v. Churner*, 206 F.3d 289, 294-5 (3d Cir. 2000),

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[6]Delaware state law does not create a liberty interest in a prisoner remaining in the general population. *Brown v. Cunningham*, 730 F. Supp. 612, 614 (D. Del. 1990) (discussing statutory provision 11 *Del C.* § 6535 regarding placement of Delaware prisoners in segregation).

[7]Because the court will dismiss all of plaintiff's federal claims for the reasons set forth herein, the court need not address the additional arguments advanced by State Defendants in support of their motion to dismiss.

[8] The Prison Litigation Reform Act of 1996 provides:

> No action shall be brought with respect to prison conditions under Section 1983 of this title or any other Federal law, by a prisoner confined in any jail, prison or other correctional facility until such administrative remedies as are available to him are exhausted.

42 U.S.C. § 1997e (a).

cert. granted, No. 99-1964, 2000 WL 798208 (Oct. 30, 2000) (§ 1997e (a) is applicable to all inmate claims except those challenging the fact or duration of confinement). Plaintiff's complaint about inadequate medical care and the actions of medical personnel is the type of complaint which must first be submitted for administrative action. *See Jones v. Delaware*, 2001 WL 652593 at *2 (D. Del. 2001).

The Delaware Department of Corrections has established administrative procedures that an inmate must follow to file a medical grievance. (D.I. 70 ¶ 7, Exh. D. at 6.) An inmate must file a grievance with the Inmate Grievance Chairperson who then forwards it to the medical staff for review. (*Id.*) If action needs to be taken, the medical staff is required to attempt an informal resolution of the grievance with the inmate. (*Id.*) If the grievance cannot be resolved informally, the grievance is forwarded to the Medical Grievance Committee to conduct a hearing. (*Id.*) If the medical grievance hearing decision does not satisfy the inmate, the inmate may complete a Medical Grievance Committee Appeal Statement which is then submitted to the Bureau Grievance Officer. (D.I. 48 ¶ 8, Exh. D at 7.) The Bureau Grievance Officer recommends a course of action to the Bureau Chief of Prisons, who renders a final decision. (*Id.*)

During the time period relevant to plaintiff's complaint, Ms. Carroll was an employee of Correctional Medical Services, Inc. and served as Director of Mental Health at Delaware Correctional Center. (D.I. 70 ¶ 2.) Ms. Carroll is neither a registered nurse nor a medical doctor. (*Id.*) Ms. Carroll argues that plaintiff did not exhaust the administrative remedies made available by the Delaware Department of Corrections as described above. (D.I. 48 ¶ 9.) In response, plaintiff states that he exhausted all administrative remedies and that he filed a medical grievance that was

rejected by Corporal Lise Merson, the acting Inmate Grievance Chairperson. (D.I. 74 at 1.)

Upon review of plaintiff's complaint and the rejection memorandum to plaintiff from Corporal Merson, it appears that plaintiff has not exhausted his administrative remedies. Specifically, the rejection from Corporal Merson refers to grievances filed against other prison employees and officials by plaintiff. There is no evidence in the record before the court that plaintiff filed a medical grievance with respect to Ms. Carroll concerning the allegations against her raised in his complaint as required by 42 U.S.C. § 1997e (a). It also seems that plaintiff is dissatisfied with the responses he received with respect to his grievances. However, "prisoners must exhaust administrative remedies available to them prior to filing a § 1983 action, whether or not the remedies provide the inmate-plaintiff with the relief desired." *Booth*, 206 F.3d at 291 (citations omitted).

Because 42 U.S.C. § 1997e (a) requires an inmate to exhaust all administrative remedies prior to filing a complaint, and, on the basis of the record before the court, it appears that several procedural steps remained under the Department of Corrections Inmate Grievance Procedure that were not completed at the time plaintiff filed his complaint, the court will grant Ms. Carroll's motion to dismiss.

As all of plaintiff's federal claims against State Defendants and Ms. Carroll have been dismissed, the court declines to exercise supplemental jurisdiction over plaintiff's state law claims. *See Borough of West Mifflin v. Lancaster,* 45 F.3d 780, 788 (3d Cir. 1995).

III. CONCLUSION

For the reasons set forth above, State Defendant's motion to dismiss (D.I. 48) is GRANTED; defendant Dee Dee Carroll's motion to dismiss (D.I. 70) is GRANTED; plaintiff's motion for temporary restraining order (D.I. 29) is DENIED as moot; plaintiff's motion for discovery (D.I. 57) is DENIED as moot; plaintiff's motion for hearing (D.I. 58) is DENIED as moot; plaintiff's motion to extend time to serve certain defendants (D.I. 59) is DENIED as moot; State Defendants' motion for protective order (D.I. 61) is DENIED as moot.

An appropriate order will issue.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

September 30, 2003
Wilmington, Delaware

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HILLARD M. WINN, Plaintiff, v. STATE OF DELAWARE DEPARTMENT OF CORRECTIONS, CORRECTIONAL MEDICAL SERVICES, GEORGE DIXON, STANLEY W. TAYLOR, JAMES PATTERSON, TOM CARROLL, ROBERT MAY, MICHAEL WELCOME, LAWRENCE MCGUIGAN, LISA M. MERSON, BETTY BURRIS, GEORGIA PURDUE, CHARLES CUNNINGHAM, DR. WISE, DAVID HOLMAN, DEE DEE CARROLL, JOSEPH H. BELANGER, MS. SAVAGE, Defendants.	)	Civil Action No. 02-34

ORDER

In accordance with the memorandum opinion issued this date, it is hereby ORDERED that:

1. State Defendant's motion to dismiss (D.I. 48) is GRANTED;
2. Defendant Dee Dee Carroll's motion to dismiss (D.I. 70) is GRANTED;
3. Plaintiff's motion for temporary restraining order (D.I. 29) is DENIED as moot;
4. Plaintiff's motion for discovery (D.I. 57) is DENIED as moot;
5. Plaintiff's motion for hearing (D.I. 58) is DENIED as moot;
6. Plaintiff's motion to extend time to serve certain defendants (D.I. 59) is DENIED as moot;
7. State Defendants' motion for protective order (D.I. 61) is DENIED as moot.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

September 30, 2003
Wilmington, Delaware