

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WAYNE BIDDLE,)
)
 Plaintiff,)
)
 v.) Civil Action No. 03-051-KAJ
)
 THOMAS L. CARROLL, et. al.,)
)
 Defendants.)
)

MEMORANDUM OPINION

Wayne Biddle, Sussex Correctional Institution #256734, P.O. Box 500, Georgetown, Delaware 19947, *pro se* plaintiff.

Richard W. Hubbard, Esq., Department of Justice, State of Delaware, 820 N. French Street, 8th Floor, Carvel Office Building, Wilmington, Delaware 19801, counsel for defendants.

Wilmington, Delaware
March 31, 2004

JORDAN, District Judge

I. INTRODUCTION

Presently before me are a Motion for an Order to Show Cause and for a Temporary Restraining Order and a Preliminary Injunction (Docket Item ["D.I."] 22) and two Motions for Administrative Transfer (D.I. 32, 34) filed by *pro se* plaintiff Wayne Biddle, who is currently an inmate at Sussex Correctional Institution ("SCI") in Georgetown, Delaware.¹ Also before me is a Motion to Dismiss filed, pursuant to Federal Rule of Civil Procedure 12(b)(6), by defendants Thomas L. Carroll, Betty Burris, Major Holmen, Ron Drake, Lieutenant Roberts, Officer Merson, and Officer J. McCarroll (collectively, the "State Defendants"). (D.I. 29; the "Motion".) For the following reasons, the State Defendants' Motion will be granted and all of plaintiff's motions will be denied as moot.

II. BACKGROUND

Plaintiff was transferred to the DCC in April 1999, at which time he began working in the infirmary as a food cart worker. (D.I. 2 at 1.) In early January 2001, while plaintiff was working in the infirmary, an inmate named Tyrone Mooris was moved from high security, or "SHU", status to the infirmary. (*Id.*) Apparently, Mr. Mooris was initially placed on SHU status for fighting. (*Id.*)

Mr. Mooris returned to the general prison population in late January 2001. (*Id.*) On February 6, 2002, plaintiff had an altercation with Mooris when plaintiff asked Mooris

¹Plaintiff filed a notice of a change of address on March 16, 2004 (D.I. 43), noting that he was now incarcerated at SCI, having been transferred there from the Delaware Correctional Center ("DCC") in Smyrna, Delaware, where he was incarcerated at all times relevant to the instant case.

to put his dirty clothes in his laundry bag. (*Id.* at 2.) When Mooris refused to do so, plaintiff “proceeded to dust mop his dirty clothes towards the dirty clothes” hamper. (*Id.*) Mooris then jumped off his bed and approached plaintiff with his fists clenched. (*Id.*) Plaintiff told Officer McCarroll about this incident. (*Id.*) Officer McCarroll told plaintiff that “you know Mooris is crazy anyway, don’t pay him any mind.” (*Id.*)

On February 22, 2002, plaintiff reported to work at the infirmary around 3:30 a.m. (*Id.* at 1.) Plaintiff began buffing the floors around 4 a.m., at which time Mooris stole his breakfast. (*Id.*) An officer working at the infirmary retrieved the stolen food. (*Id.*) At 8:45 a.m., plaintiff went to D-Ward to eat his breakfast. (*Id.*) Mooris was there, and plaintiff asked him why he took his breakfast. (*Id.*) An argument ensued, and Mooris “head-butted” plaintiff under his left eye. (*Id.*) Plaintiff then placed Mooris in a restraint hold. (*Id.* at 2.) Plaintiff was treated for a cut under his left eye and was then handcuffed and taken to isolation for 15 days. (*Id.*) He was released from isolation on March 8, 2002, and found not guilty (that is, not responsible for the incident with Mooris) by the administrative board on April 4, 2002, but he was not reinstated to his job as a food cart worker in the infirmary. (*Id.*)

Between March 24, 2002 and August 20, 2002, plaintiff filed approximately ten grievances with various State Defendants, requesting to be reinstated to his job as a food cart worker in the infirmary and requesting back pay and work credit. (*See id.* at 3-4.) State Defendants repeatedly rejected plaintiff’s grievances, explaining that jobs are not held for inmates pending the outcome of a hearing before the administrative board. (*Id.* at 3.) As Deputy Warden Betty Burris wrote to plaintiff, “[j]ust because you were found ‘not guilty’ does not mean you automatically return to your previous standing, job,

and housing. These are classification matters. You could be found not guilty, but still not be accepted for a certain job....” (*Id.*)

Plaintiff filed the instant case pursuant to 42 U.S.C. § 1983, alleging that the State Defendants violated his Eighth Amendment right to be free from cruel and unusual punishment while he was incarcerated at the Delaware Correctional Center (“DCC”) in Smyrna, Delaware. (D.I. 2.) Plaintiff claims that State Defendants failed to protect him from Mooris and acted with deliberate indifference to his safety and well being. (*Id.* at 6.) He requests that State Defendants be held liable in their individual and official capacities due to their negligence and he is seeking \$57,719.20 in compensatory and punitive damages. (*Id.*)

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 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).

IV. DISCUSSION

The State Defendants argue that the allegations contained in plaintiff’s complaint are insufficient to state an Eighth Amendment claim upon which relief can be granted, thus making dismissal appropriate under Federal Rule of Civil Procedure 12(b)(6). (D.I. 29 at 1.) Essentially, plaintiff’s claim is that the State Defendants failed to protect him

from Mooris. In order to sustain his claim, plaintiff must show that the State Defendants acted with deliberate indifference, that is, they knew that plaintiff faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable steps to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). As the United States Supreme Court stated:

We hold...that a prison official cannot be found liable for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference.... [A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.

Id. at 837-38.

Even though he is not explicit in his complaint, a fair reading of plaintiff's argument is that, due to the incident that occurred between him and Mooris on February 6, 2002, the State Defendants knew that plaintiff was in danger of the attack that occurred on February 22, 2002 and yet did nothing to prevent it. The events of February 6th were that Mooris clenched his fists at plaintiff after plaintiff asked him to put his dirty clothes in the hamper. Plaintiff then told Officer McCarroll about Mooris's behavior. There was no physical contact between plaintiff and Mooris at that time, nor did Mooris make any threat of a future attack on plaintiff. This incident does not amount to "an excessive risk to inmate health or safety," rather, it is akin to "an isolated mishap," which does not give rise to an Eighth Amendment claim. See *Shaw v. Stackhouse*, 920 F.2d 1135, 1143 (3d Cir. 1990) ("...the right to protection is not activated by any isolated mishap, or called into question by each bruise that a patient may suffer..."). That

plaintiff told Officer McCarroll about the February 6th incident does not alter the analysis, as there is still nothing in the record to indicate that Officer McCarroll or any of the other State Defendants knew of and disregarded a substantial risk to plaintiff's health or safety. The February 6th incident between plaintiff and Mooris, standing alone, did not create a substantial risk to plaintiff or constitute a set of facts from which the State Defendants could infer that such a risk existed. *See Farmer*, 511 U.S. at 837-38. Therefore, plaintiff's complaint must be dismissed for failure to state a cause of action under the Eighth Amendment upon which relief may be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6).

V. CONCLUSION

For the reasons set forth, the State Defendants' Motion (D.I. 29) will be granted. Plaintiff's Motion for an Order to Show Cause and for a Temporary Restraining Order and a Preliminary Injunction (D.I. 22) will be denied as moot, since plaintiff has no likelihood of prevailing on the merits of this case as he has failed to state an actionable claim. Plaintiff's two Motions for Administrative Transfer (D.I. 32, 34) will also be denied as moot, since he has been transferred from the DCC to the SCI (*see supra* at n.1).

An appropriate order will issue.

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ORDER

For the reasons stated in the Memorandum Opinion issued today, IT IS HEREBY ORDERED that the State Defendants' Motion (D.I. 29) is GRANTED. Plaintiff's Motion for an Order to Show Cause and for a Temporary Restraining Order (D.I. 22) and his two Motions for Administrative Transfer (D.I. 32, 34) are DENIED as moot.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
March 31, 2004