

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOHN H. HAMILTON,)
)
 Plaintiff,)
)
 v.) Civil Action No. 03-807-GMS
)
 EARL MESSICK, RICK KEARNEY,)
 DEPARTMENT OF CORRECTIONS,)
 DR. BURNS, and FIRST)
 CORRECTIONAL MEDICAL,)
)
 Defendants.)

MEMORANDUM ORDER

John H. Hamilton ("Hamilton") is a pro se litigant who was incarcerated at the Sussex Correctional Institution ("SCI") located in Georgetown, Delaware. His SBI number is 316350. Hamilton has 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

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two-step process. First, the court must determine whether Hamilton is eligible for pauper status. On August 26, 2003, the court granted Hamilton leave to proceed in forma pauperis, assessed \$42.60 as the initial partial filing fee and ordered him to file an authorization form within thirty days, or the case would be dismissed. Hamilton filed the required authorization form on September 16, 2003.

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 that Hamilton's complaint falls under any 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). Thus, the court must "accept as true factual allegations in 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

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 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).

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 as used in § 1915(e)(2)(B), the 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 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, Hamilton's complaint has no arguable basis in law or in fact, and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

A. The Complaint and the Amendment

Hamilton filed this complaint on August 13, 2003. (D.I. 2) Hamilton names the following defendants: Earl Messick ("Messick"), Rick Kearney ("Kearney"), and the Department of Corrections ("DOC"). (Id. at 3) Hamilton alleges that Messick, Kearney and the DOC have violated his Fourteenth Amendment rights "by opening his mail and then holding it for approximately six weeks before contacting him about the issue." (Id.) Specifically, Hamilton alleges that on two separate occasions, he

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).

sent mail to his mother marked "legal mail." (Id. at 4) Hamilton avers that he mailed a motion to dismiss which he intended to file in a pending criminal case. (Id.) Hamilton asserts that because his "legal mail" was intercepted, the court did not receive the motion and "they had no choice but to convict him of the charge." (Id.) Hamilton also alleges that the letters to his mother contained prescription medication, which Messick confiscated. (Id.) Hamilton requests that the court award him unspecified punitive damages, as well as all legal fees. (Id. at 4) He further requests that the court order "[a] full investigation into how inmate's mail is processed in and out of the penal system." (Id.)

On October 1, 2003, Hamilton filed a "Motion for Amending CA 03-807-GMS" which the court construes as an amended complaint pursuant to Fed. R. Civ. P. 15(a). (D.I. 6) Here, Hamilton adds Dr. Burns ("Burns"), and First Correctional Medical, Inc. as defendants. (Id. at 4) In the amended complaint, Hamilton alleges that on July 21, 2003, his "medication of singulair and albuterol was abruptly stopped from being prescribed [sic]." (Id. at 2) Hamilton alleges that he filed a grievance, and was told at the resulting hearing that his medication was stopped because he mailed his medication to his mother. (Id.) Hamilton further alleges that he explained that the medication he mailed to his mother was "extra," and that he mailed it, to avoid getting in trouble for having contraband. (Id.) Hamilton

alleges that he mailed the medication to his mother "for personal use at a later date." (Id.)

On July 1, 2004, Hamilton filed a second "Motion Amending C.A. No. 03-807-GMS." (D.I. 11) Hamilton avers that he is amending the complaint to "add eighth amendment violations," and "to explain the allegations against the defendants in a more precise manner." (Id. at 2) "After amending once or after an answer has been filed, the plaintiff may amend only with leave of the court or the written consent of the opposing party, but 'leave shall be freely given when justice so requires.'" Shane v. Fauver, 213 F.3d 113, 115 (3d Cir.2000) (quoting Fed. R. Civ. P. 15(a)). The court shall grant Hamilton's motion.³

In the second amended complaint, Hamilton alleges that he mailed his legal documents and his "extra" medication to his mother on June 11, 2003. (Id.) He further alleges that when his mother did not receive the mail, he submitted different documents to the Courts. (Id.) Next, Hamilton alleges that August 15, 2003, he was told "my medication was discontinued with no apparent reason." (Id. at 3) Hamilton also alleges that he met with Burns at the "end of August 2003" and she "immediately put me back on the albuterol inhaler." (Id.) Hamilton further alleges that Burns called him back a week later and prescribed singulair. (Id.)

³ On May 3, 2004, Hamilton filed a Motion for Interrogatories. (D.I. 15) Because the court finds that the complaint is frivolous, the motion is moot.

C. Analysis

1. Hamilton's Claim Regarding "Legal Mail"

Hamilton alleges that Messick has violated his Fourteenth Amendment rights by confiscating his outgoing "legal" mail, addressed to his mother. Prisoners have a limited liberty interest in their mail under the First Amendment. Thornburgh v. Abbott, 490 U.S. 401, 407 (1989); Martin v. Brewer, 830 F.2d 76, 77 (7th Cir. 1987). But prisons may adopt regulations or practices which impinge on a prisoner's First Amendment rights as long as the regulations or practices are "reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987). The Turner standard applies to regulations and practices concerning all correspondence between prisoners, and to regulations concerning incoming mail received by prisoners from non-prisoners. See Thornburgh, 490 U.S. at 413. Although legal mail must be treated more cautiously, prison officials may institute procedures for inspecting it. See Wolff v. McDonnell, 418 U.S. 539, 576-77 (1974).

Thus, as a general rule, prisoner non-legal mail can be opened and read outside the inmate's presence, and does not violate the prisoner's constitutional rights. See Witherow v. Paff, 52 F.3d 264, 265-66 (9th Cir. 1995) (upholding inspection of outgoing mail); Smith v. Boyd, 945 F.2d 1041, 1043 (8th Cir. 1991) (upholding the inspection of incoming mail); Gaines v. Lane, 790 F.2d 1299, 1304 (7th Cir 1986) (upholding the inspection of

outgoing and incoming mail); see also Cherry v. Litscher, No. 02-C-71-C, 2002 WL 32350051 at *14 (W.D. Wis. Apr. 1, 2002) (citing Martin v. Brewer, 830 F.2d at 77). In this case, Hamilton clearly alleges that Messick intercepted mail Hamilton directed to his mother. (D.I. 2 at 3; D.I. 6; D.I. 11) Although Hamilton included a motion to be filed in a state court with the letter, this inclusion doesn't transform his mail into "legal" mail. Legal mail is mail sent between attorneys and prisoners. See Wolff v. McDonnell, 418 U.S. 576-77. Consequently, Messick could open Hamilton's mail addressed to his mother and inspect it for contraband. See Turner v. Safley, 482 U.S. at 89. Therefore, Hamilton's claim that Messick violated his First Amendment rights by interfering with his "legal" mail has no arguable basis in law or in fact.

To the extent that Hamilton is alleging that Messick violated his First Amendment rights by interfering with his access to the courts, his claim also fails. Prisoners must be allowed "adequate, effective and meaningful" access to the courts. Bounds v. Smith, 430 U.S. 817, 822 (1977) (holding that prisons must give inmates access to law libraries or direct legal assistance). However, in order for plaintiff to state a claim that interception of his legal materials has denied him access to the courts, he must show some *actual injury*. See Lewis v. Casey, 518 U.S. 343 (1996) (emphasis added).

Specifically, Hamilton must show that a "nonfrivolous legal claim had been frustrated or impeded" by the interception of his

legal material. Id. at 355. In other words, Hamilton must show that his nonfrivolous claim was effectively impeded because he was unable to mail his legal material to his mother, not that the interception itself was unreasonable. See Reynolds v. Wagnor, 128 F.3d 166, 183 (3d Cir. 1997). First, Hamilton alleges that he was convicted because the court did not receive his motion. (D.I. 2 at 4) However, Hamilton also alleges that once he realized that his mother did not receive his letter, he mailed "other documents" directly to the court. (D.I. 11) Hamilton has failed to allege that the interception of his legal material impeded his pursuit of a nonfrivolous claim. Absent an allegation of how his access to the courts was adversely affected, the court concludes that to the extent Hamilton is alleging that Messick denied him access to the courts, his claim has no arguable basis in law or in fact.

2. Hamilton's Vicarious Liability Claims

Hamilton avers that he is not attempting to hold Kearney vicariously liable for Messick's conduct. (D.I. 11 at 8) Hamilton alleges that as the Warden of SCI, Kearney has personal knowledge of his allegations because Kearney initialed Hamilton's grievance. (Id. at 6) Nonetheless, Hamilton's claim against Kearney must fail because it rests solely on a theory of vicarious or supervisory liability. Supervisory liability cannot be imposed under § 1983 on a respondeat superior theory. See Monell v. Dep't. of Social Services of City of New York, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976).

In order for a supervisory public official to be held liable for a subordinate's constitutional tort, the official must either be the "moving force [behind] the constitutional violation" or exhibit "deliberate indifference to the plight of the person deprived." Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (citing City of Canton v. Harris, 489 U.S. 378, 389 (1989)). Hamilton has attached the grievance as evidence of Kearney's personal knowledge. (D.I. 11 at 11-11a) The court notes however, that the grievance is signed only by the Inmate Grievance Chairperson, and there is no indication on the copy provided that Kearney ever reviewed it. (Id.) Nothing in the complaint indicates that Kearney was the "driving force [behind]" Hamilton's allegations, or that Kearney remained "deliberately indifferent" to his plight. Sample v. Diecks, 885 F.2d at 1118. Consequently, Hamilton's claim against Kearney has no arguable basis in law or in fact.

Hamilton has also named First Correctional Medical, Inc. as a defendant, but has failed to raise any specific allegations regarding the it. It appears that Hamilton has named First Correctional Medical, Inc. as a defendant based solely on its role as the contracted medical service provider for the DOC, and as such, Dr. Burns' employer. Hamilton's claim against First Correctional Medical, Inc. rests solely on a theory of vicarious or supervisory liability. For the reasons discussed above, Hamilton's claim against First Correctional Medical, Inc. has no arguable basis in law or in fact.

3. Hamilton's Claim against the DOC

Hamilton's claim against the DOC must also fail. The DOC is an agency of the State of Delaware. To state a claim under 42 U.S.C. § 1983, Hamilton must allege "the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981) (overruled in part on other grounds not relevant here by, Daniels v. Williams, 474 U.S. 327, 330-31 (1986))). "[T]he Supreme Court has held that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." Ospina v. Dep't of Corrections, State of Delaware, 749 F.Supp. 572, 577 (D. Del. 1991) (citing Wills v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989)).

Furthermore, "[a]bsent a state's consent, the Eleventh Amendment bars a civil rights suit in federal court that names the state as a defendant." Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981) (citing Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam)). The State of Delaware has not waived its sovereign immunity under the Eleventh Amendment. See Ospina v. Dep't of Corrections, 749 F.Supp. at 579. Consequently, Hamilton's claim against the DOC has no arguable basis in law.

4. Hamilton's Claim against Burns

It is undisputed that prisoners are entitled to reasonable medical care and may hold prison officials liable under the

Eighth Amendment if such care is inadequate. Estelle v. Gamble, 429 U.S. 97, 104-105 (1976). However, in order to establish an Eighth Amendment violation a plaintiff must allege that he has endured a sufficiently serious deprivation, and that the defendant has acted with deliberate indifference to the plaintiff's plight. Wilson v. Seiter, 501 U.S. 294, 298 (1991). A prison official is deliberately indifferent if he knows that a prisoner faces a substantial risk of serious harm and fails to take reasonable steps to avoid the harm. Farmer v. Brennan, 511 U.S. 825, 837 (1994). A prison official may manifest deliberate indifference by "intentionally denying or delaying access to medical care." Estelle v. Gamble, 429 U.S. at 104-05. Thus, in order to prove that stopping Hamilton's prescription medication for a two week period violates the Eighth Amendment, Hamilton must prove that Burns knew that stopping the medication could cause Hamilton serious harm and deliberately ignored the risk.

Hamilton avers that he mailed 92 singular pills and 1 albuterol inhaler to his mother. (D.I. 11 at 2) Hamilton also contends that Burns knew he had a medical need for the prescriptions, and deliberately cancelled them "for no apparent reason." (D.I. 11 at 3) Tellingly, Hamilton fails to explain how he obtained the "extra" medication that he mailed to his mother. However, he does allege that the prescription was in his name, and thus not contraband. (Id.) Absent some other explanation, it seems reasonable to conclude that Hamilton could only obtain "extra" medication in his own name, by not taking his

medications every day. Burns likely deduced the same upon learning that Hamilton had mailed his "extra" medication to his mother. Under the circumstances, Hamilton is hard pressed to argue that Burns knew that stopping his medication could cause Hamilton serious harm and deliberately ignored the risk.

Furthermore, the court notes Hamilton's allegations regarding the suspension of his medication are inconsistent. On the one hand, he alleges that, "I was without this much needed life saving treatment for 30+ days, even after several complaints to medical staff..." (D.I. 11 at 7) Yet, on the other hand, he alleges that "from the time I mailed the medication, until I was readministered the same meds., I had medication from previous med pick ups." (Id. at 3)

There is no indication from the facts, as alleged, that Burns knew Hamilton faced a serious risk of harm and deliberately ignored the risk. As presented, Hamilton's claim against Burns has no arguable basis in law or in fact.

III. CONCLUSION

For the above stated reasons, the court finds that Hamilton's claims against the defendants are frivolous within the meaning of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

DATED: March 31, 2005

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOHN H. HAMILTON,)
)
 Plaintiff,)
)
 v.) Civil Action No. 03-807-GMS
)
 EARL MESSICK, RICK KEARNEY,)
 DEPARTMENT OF CORRECTIONS,)
 DR. BURNS, and FIRST)
 CORRECTIONAL MEDICAL,)
)
 Defendants.)

ORDER

NOW THEREFORE, this 31st day of March, 2005, IT IS HEREBY
ORDERED that:

1. Hamilton's "Motion Amending C.A. No. 03-807-GMS" (D.I. 11) is GRANTED.
2. Hamilton's Motion for Interrogatories (D.I. 15) is MOOT.
3. Hamilton's complaint is DISMISSED in accordance with the provisions of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).
4. The Clerk of the Court shall cause a copy of this Memorandum and accompanying Order to be mailed to Hamilton.

DATED: March 31, 2005

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE