

FARNAN, District Judge.

Plaintiff Samuel T. Poole (hereinafter "Plaintiff") is a pro se litigant who is presently incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. His SBI number is 337607. At the time Plaintiff filed this complaint, he was incarcerated at the Multi-Purpose Criminal Justice Facility ("MPCJF") located in Wilmington, Delaware. On September 22, 1999, 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

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 the Plaintiff is eligible for pauper status. The Court granted Plaintiff's request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 on September 22, 1999 and ordered Plaintiff to pay \$24.00 as an initial partial filing fee within thirty days or the case would be dismissed. Plaintiff paid the full filing fee on October 21, 1999.

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

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 Probation and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997)(applying Rule 12(b)(6) standard as appropriate standard for dismissing claim 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

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).

to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).² For the reasons discussed below, the Court will dismiss the Complaint as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

A. Complaint

Plaintiff alleges two separate Eighth Amendment claims. (D.I. 2). Specifically, Plaintiff alleges that he suffered a head injury as a result of a slip and fall accident that would not have occurred but for the overcrowded conditions at MPCJF. (D.I. 2 at 3). According to Plaintiff, the overcrowding of cells and lack of proper staffing in cell blocks is "not conducive to safety." (D.I. 2 at 3). Additionally, Plaintiff alleges that he received inadequate medical treatment for the

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

head injury he sustained as a result of his fall. (D.I. 2 at 4). Plaintiff alleges that, after he slipped and injured his head, he was attended to by a corrections officer who administered first aid until medical personnel arrived. (D.I. 2 at 4). Plaintiff further alleges that he was then taken to MPCJF's infirmary where he received fifteen stitches. (D.I. 2 at 4). According to Plaintiff, the treatment he received was inadequate because he should have been seen by a plastic surgeon to prevent or lessen his scar. (D.I. 2 at 4).

Plaintiff requests the Court to issue a declaratory judgment stating that the overcrowded conditions at MPCJF and the lack of adequate medical treatment violate the Eight Amendment. (D.I. 2 at 5). Plaintiff also requests the Court to issue an injunction ordering Defendants to provide him with adequate medical services. (D.I. 2 at 5). Finally, Plaintiff requests compensatory and punitive damages in an unspecified amount. (D.I. 16). Because Plaintiff is no longer incarcerated at MPCJF, his request for injunctive relief is moot. See e.g. Weaver v. Wilcox, 650 F.2d 22, 27 (3rd Cir. 1981); Jerry v. Francisco, 632 F.2d 252 (3rd Cir. 1980).

B. Analysis

1. Plaintiff's Claim Of Overcrowded Conditions Is Frivolous.

"It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." Helling v. McKinney, 509 U.S. 25, 32 (1993). 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). Thus, in order to prove that the general overcrowded conditions at MPCJF violate the Eighth Amendment, Plaintiff must satisfy a two prong test which is both objective and subjective. Id.

To satisfy the objective prong, Plaintiff must allege that he is "incarcerated under conditions posing a substantial risk of serious harm." Farmer v. Brennan, 511 U.S. 825, 834 (1994) (citing Helling v. McKinney, 509 U.S. at 35). Serious harm will be found only when the conditions of confinement "have a mutually enforcing effect that produces the deprivation of a single identifiable human need such as food, warmth, or exercise," and "[n]othing so amorphous as 'overall conditions' can rise to the level of [such a violation] when no specific deprivation of a single human need exists."

Blizzard v. Watson, 892 F.Supp. 587, 598 (D. Del. 1995)
(citing Wilson v. Seiter, 501 U.S. at 303-304).

After reviewing Plaintiff's allegations in light of the standard of review, the Court concludes that Plaintiff's allegations concerning the overcrowded conditions at MPCJF lack an arguable legal basis. Specifically, the Court concludes that Plaintiff has failed to allege that he has suffered a serious deprivation as a result of the alleged overcrowded conditions. With regard to his slip and fall, Plaintiff alleges:

I noticed that the sink was clogged an[d] water was all over the floor. The lights on the pod "2-M" were turned down low because of the heat, the air conditioning was not working. The water in the mop bucket was dirty. I asked Officer Deel, who was in the guard's "Bubble" booth, where to carry the dirty mop bucket. He advised me to empty the bucket over by the wash stand. I did so, then went back to the mop closet and slipped on the water that had been left on the floor.

(D.I. 2 at 4).

In the Court's view, Plaintiff's allegations do not set forth a serious deprivation, but, at most, state a claim for

ordinary negligence. However, it is well established that mere negligence by a state official is insufficient to state a claim under § 1983. Daniels v. Williams, 474 U.S. 327, 329 (1986). Accordingly, the Court concludes that Plaintiff's claims lack an arguable legal basis, and therefore, the Court will dismiss as frivolous Plaintiff's Complaint insofar as it relates to overcrowded conditions and his slip and fall.

2. Plaintiff's Claim Of Inadequate Medical Treatment Is Frivolous.

As for Plaintiff's remaining allegations concerning inadequate medical treatment, the Court likewise concludes that Plaintiff's claims lack an arguable legal basis. Plaintiff alleges that the medical treatment he received was inadequate because he should have been seen by a plastic surgeon to prevent or lessen his scar. (D.I. 2 at 4). However, the "mere difference of opinion between the prison's medical staff and the inmate as to the diagnosis or treatment which the inmate receives does not support a claim of cruel and unusual punishment." Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir. 1980); Fitzgerald v. Septer, Civil Action No. 97-663-JJF at 2 (D. Del. July 27, 1998) (holding that claim alleging mere dissatisfaction with medical care administered

to prisoner is insufficient to support cognizable claim under 1983); Johnson v. United States, 980 F. Supp. 148, 153 (E.D. Pa. 1997). Further, it is well-established that "medical malpractice is insufficient to present a constitutional violation." Durmer v. O'Carroll, 991 F.2d 64, 66 (3d Cir. 1993) (citing Estelle v. Gamble, 429 U.S. 92, 106 (1976)). Accordingly, the Court concludes that Plaintiff's remaining claims of inadequate medical treatment also lack an arguable legal basis, and therefore, the Court will dismiss as frivolous Plaintiff's Complaint.

III. CONCLUSION

For the reasons discussed, the Court will dismiss as frivolous Plaintiff's Complaint (D.I. 2).

An appropriate Order will be entered.

