

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JACOB BROSKY,)	
Plaintiff,)	Civil Action No. 14-89
)	
v.)	Senior District Judge Maurice B. Cohill
)	Magistrate Judge Maureen P. Kelly
BRIAN MILLER, <i>Warden</i>; MIKE)	
ZAVATTA, <i>Dep. Warden</i>; JACK)	
HENECKS, JR.; COUNTY DCT.)	
CARLISSIMO,)	
)	
Defendants.)	

MEMORANDUM ORDER

Jacob Brosky (“Brosky”), filed a Complaint on April 3, 2014 against Defendants Brian Miller, *Warden* (“Miller”), Mike Zavada, *Dep. Warden* (“Zavada”), Jack Henecks, Jr., a Fayette County District Attorney (“Henecks”), and Fayette County Detective Carlissimo (“Carlissimo”)(collectively “Defendants”) [ECF No. 5]. In the Complaint Brosky alleges that Miller and Zavada violated his Eighth Amendment Rights when they failed to protect him from being assaulted by other inmates in the prison facility. Brosky also alleges that Henecks and Carlissimo discriminated against him by not criminally charging the inmates who assaulted him.

On July 7, 2014 Defendants filed a Motion to Dismiss for Failure to State a Claim [ECF No. 16]. Brosky filed a Response to the Motion on August 20, 2014 [ECF No. 19]. Magistrate Judge Maureen P. Kelly issued a Report and Recommendation (“R&R”) regarding the Motion to Dismiss on February 3, 2015 [ECF No. 20]. Brosky was given an opportunity to file objections on or before February 20, 2015 and to date has not done so.

In her R&R, Judge Kelly found that Brosky did not have standing to bring a claim against Henecks or Carlissimo and that any amendment to the Complaint would be futile in this regard. Therefore, Judge Kelly recommends dismissal of this claim with prejudice. On the other hand, with regard to the claim against Miller and Zavada, Judge Kelly recommends dismissal without prejudice to allow Brosky to amend his complaint.

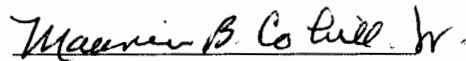
After *de novo* review of the case, together with the Report and Recommendation, we agree with Magistrate Judge Kelly's disposition of the case.

Therefore, the following Order is entered:

And now to-wit, this 25th day of February **2015**, it is hereby **ORDERED, ADJUDGED,** and **DECREED** that the Petitioner's Complaint [ECF No. 5] is **DISMISSED**. With regard to the discrimination claim against Henecks and Carlissimo the Complaint is dismissed with prejudice. With regard to the claim against Miller and Zavada the Complaint is dismissed without prejudice. Brosky may file an amended complaint solely with respect to the Eighth Amendment claim for failure to protect which can better withstand the scrutiny under the standards of review for a plausible claim if the facts of the case allow for that.

The Report the Report and Recommendation of Magistrate Judge Kelly dated February 3, 2015 [ECF No. 20] is adopted as the Opinion of the Court.

The Clerk shall mark this case **CLOSED**.


Maurice B. Cohill
Senior United States District Court Judge
Western District of Pennsylvania