

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Miguel Jose Garcia, :
Appellant :
 :
v. : No. 950 C.D. 2010
 : Submitted: July 23, 2010
Patty McKissock, Fred J. Ruffo, :
Michael W. Harlow, Jeffrey A. Beard :
and Timothy Mark :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: August 19, 2010

Miguel Jose Garcia (Garcia) appeals *pro se* from an order of the Court of Common Pleas of Mercer County (trial court) dismissing his complaint and granting the preliminary objections filed on behalf of Patty McKissock (McKissock), the Hearing Examiner for the Department of Corrections; Fred J. Ruffo, the Deputy Superintendent for Centralized Services and Chairman of the Program Review Committee; Michael W. Harlow, the Superintendent of Mercer State Prison; Jeffrey A. Beard, the Secretary of the Department of Corrections; and Timothy Mark, the Deputy Chief Counsel for Inmate Grievances and Appeals (collectively, Prison Officials). For the reasons that follow, we affirm the trial court's order.

Garcia is currently an inmate at one of the State Correctional Institutions (SCI) in Pennsylvania. On July 10, 2009, Garcia filed a four-count complaint with the trial court against the Prison Officials who were working at SCI-Mercer where Garcia was incarcerated during the times pertinent to the allegations in his complaint. Garcia alleged in his complaint that the Prison Officials intentionally and purposefully violated their statutory duties and his constitutional rights when they failed to hold a fair misconduct hearing; denied his appeal from that hearing after he pursued legal action against his prison counselor and filed a civil complaint against the prison; and gave him more time in the restrictive housing unit than other prisoners for the same misconduct.

The hearing involved charges against Garcia for extortion and blackmail for threatening to file a motion for sanctions against his prison counselor for her refusal to remove herself as his counselor due to an alleged conflict in interest based on another lawsuit that Garcia had file against her. Garcia also threatened to place a lien against her home and property. Hearing Examiner McKissock dismissed the extortion and blackmail charges but still imposed 45 days in the restrictive housing unit for threatening to file an unwarranted motion for sanctions against a prison official.

Garcia also alleged in his complaint that on three separate occasions, he was given additional sanctioned days in the restrictive housing unit for refusing to let another inmate move into the cell with him, a Category B Class 1 Misconduct violation, but was allegedly given more time by Hearing Officer McKissock than other inmates for the same offense in retaliation for taking action

against his prison counselor. For one of those violations, Garcia was given an additional 60 days in the restrictive housing unit, but for the other two violations, he was given 90 days twice in the restrictive housing unit. Garcia alleged that he was receiving more disciplinary time because, as told to him by a corrections officer, Hearing Officer McKissock did not like him, referred to him as a “jailhouse lawyer,” and stated that whenever Garcia came in front of her, Hearing Officer McKissock was going to make him “regret it.”

Garcia alleged that he filed a misconduct violation against Hearing Officer McKissock for retaliation and discrimination which was denied by the Program Review Committee headed by Mr. Ruffo. He appealed to Superintendent Harlow of SCI-Mercer who also denied his appeal. Because his appeals were denied, he filed an action against the Prison Officials. As a result of the actions of the Prison Officials, Garcia claimed, *inter alia*, that:

- they violated his Pennsylvania and United States constitutional rights with regard to retaliation for the redress of his grievances and complaints;
- he was deprived equal protection of the law to have similarly situated individuals treated similarly under the law; and
- he was intentionally deprived of his rights secured by the Pennsylvania and United States Constitutions with regard to cruel and unusual punishment, unlawful confinement and due process.

He requested compensatory damages in the amount of \$50,000 and punitive damages in the amount of \$100,000 from each Prison Official.

The Prison Officials filed preliminary objections in the nature of a demurrer alleging that 1) the Pennsylvania Constitution did not provide a private cause of action for money damages; 2) they were entitled to the protections of sovereign immunity to the extent Garcia's complaint contains state law tort claims; 3) there was no Fourteenth Amendment due process violation regarding his restrictive housing; and 4) there was no conspiracy claim under Section 1983. The trial court dismissed Garcia's complaint because:

- A violation of the Pennsylvania Constitution did not support a claim for money damages under the facts alleged in the complaint;
- Any claim for injunctive relief had been mooted by Garcia's transfer from SCI-Mercer;
- The Prison Officials were entitled to the protections of state sovereign immunity; and
- Garcia failed to allege facts that would implicate a cruel and unusual punishment claim, a due process claim, an equal protection claim, or any other claim cognizable under federal law.

The trial court specifically noted that sovereign immunity barred Garcia's state law claims for damages.

Garcia then filed this appeal¹ contending that the trial court abused its discretion by dismissing his complaint because even if the Prison Officials'

¹ When reviewing the decision of a trial court, our scope of review is limited to determining whether constitutional rights have been violated or whether the trial court abused its **(Footnote continued on next page...)**

conduct was barred by state sovereign immunity, they were only entitled to immunity if the harm they caused was not by willful misconduct but, in this case, their actions, in fact, constituted willful misconduct.²

Unlike local agency employees, all Commonwealth employees³ are protected by sovereign immunity from the imposition of personal liability for any state law intentional tort claims when acting within the scope of their duties even if they engage in willful misconduct, notwithstanding the nine exceptions found in 42 Pa. C.S. §8522.⁴ *McCool v. Department of Corrections*, 984 A.2d 565 (Pa.

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discretion or committed an error of law. *Mann v. City of Philadelphia*, 563 A.2d 1284 (Pa. Cmwlth. 1989.)

² Garcia also argues that an action pursuant to the Eleventh Amendment to the United States Constitution does not bar claims of constitutional violations that the Prison Officials committed in their individual or personal capacity. The Eleventh Amendment states that “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens.” U.S. Const. amend. XI. The trial court did not bar a claim under 42 U.S.C. §1983 because the Prison Officials were protected by the Eleventh Amendment, but found that Garcia failed to make out such a claim in his complaint against them.

³ 42 Pa. C.S. §8501 defines a Commonwealth party as “A Commonwealth agency and any employee thereof, but only with respect to an act within the scope of his office or employment.” SCI-Mercer is a part of the Department of Corrections which is a Commonwealth agency entitled to sovereign immunity. *Simons v. State Correctional Institute at Camp Hill*, 615 A.2d 924 (Pa. Cmwlth. 1992).

⁴ 42 Pa. C.S. §8522 provides that the defense of sovereign immunity shall not be raised to claims for damages caused by:

- (1) operation of any motor vehicle in the possession or control of a Commonwealth party;

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Cmwlth. 2009); *La Frankie v. Miklich*, 618 A.2d 1145 (Pa. Cmwlth. 1992). In any event, none of those exceptions apply in this case. Additionally, “[t]he mere existence of a personal motivation is insufficient to bring an employee’s actions outside the scope of his employment where the conduct was within the scope of employment generally.” *Brumfield v. Sanders*, 232 F.3d 376, 380 (3d Cir. 2000). The only question is whether the Prison Officials were acting within the scope of their duties, and Garcia alleges that they all were. Because the trial court also determined that the Prison Officials were shielded by sovereign immunity, Garcia’s contention that they committed willful misconduct and were not entitled to immunity fails.

Garcia also argues that he was deprived due process of law in violation of the Fourteenth Amendment⁵ by the imposition of 90 days of

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- (2) acts of health care employees of Commonwealth agency medical facilities or institutions;
- (3) care, custody or control of personal property in the possession or control of Commonwealth parties;
- (4) dangerous condition of Commonwealth agency real estate and sidewalks;
- (5) dangerous condition of highways under the jurisdiction of a Commonwealth agency created by potholes or sinkholes or other similar conditions created by natural elements;
- (6) care, custody or control of animals in the possession or control of a Commonwealth party;
- (7) sale of liquor at Pennsylvania liquor stores;
- (8) acts of a member of the Pennsylvania military forces; and
- (9) administration, manufacture and use of a toxoid or vaccine.

⁵ The Fourteenth Amendment to the United States Constitution provides:

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confinement in the restricted housing unit following his misconduct hearing. However, this Court has held that holding a prisoner for 120 days does not deprive him of a legally cognizable liberty interest. *Brown v. Blaine*, 833 A.2d 1166 (Pa. Cmwlth. 2003). Therefore, Garcia, who was confined for a lesser period of 90 days, did not have his rights under the Fourteenth Amendment violated. *See also Griffin v. Vaughn*, 112 F.3d 703 (3d Cir. 1997) (less than 15 months in confinement in administrative custody in Pennsylvania prison does not implicate due process concerns under *Sandin v. Conner*, 515 U.S. 472 (1995), because it is not “a typical condition of confinement” giving rise to a liberty interest). Similarly, although Garcia alleges an equal protection argument, because Garcia was in violation of three Category B Class 1 Misconduct violations and he failed to allege sufficient facts to support the basic inference that he was treated arbitrarily by being given more disciplinary time for the same infraction of prison rules than the other two inmates he identified as comparators without there being a reason, we find no fault with the trial court’s determination.

Finally, Garcia now claims that he was unfairly placed in the restrictive housing unit as retaliation for filing his lawsuit against the Prison Officials. He also argues that pursuing legal action against his prison counselor is

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No state shall...deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, §1.

an activity protected by the First Amendment.⁶ However, his complaint clearly indicates that he was placed in the restrictive housing unit for 45 days after the initial misconduct hearing because he had threatened his prison counselor with a motion for sanctions in an attempt to get her to remove herself as his counselor. Threatening a prison official with motions in an effort to coerce her to refrain from acting is not a constitutionally protected activity. *See Jae v. Good*, 946 A.2d 802, 809 n. 14 (Pa. Cmwlth. 2008); *Rosen v. Tesoro Petroleum Corporation*, 582 A.2d 27 (Pa. Super. 1990). Consequently, because his complaint provides support that he was placed in the restrictive housing unit for reasons other than retaliation by the Prison Officials, his argument is without merit.

Accordingly, the order of the trial court is affirmed.

DAN PELLEGRINI, JUDGE

⁶ The First Amendment to the United States Constitution provides that “Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.” U.S. Const. amend. I.

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ORDER

AND NOW, this 19th day of August, 2010, the order of the Court of
Common Pleas of Mercer County, dated October 9, 2009, is affirmed.

DAN PELLEGRINI, JUDGE