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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVEN DEAN PARKS,
Plaintiff,

No. C-12-6140 EMC (pr)

v.

ORDER OF DISMISSAL

G. WILLIAMS, C/O,
Defendant.

Steven Dean Parks, an inmate at San Quentin State Prison, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983 against correctional officer Williams for allegedly falsifying a CDC 128-A counseling chrono that documented minor inmate misconduct (i.e., showering at an unauthorized time), and imposed no discipline. Upon reviewing the complaint pursuant to 28 U.S.C. § 1915A, the Court issued an order discussing several deficiencies in the complaint and dismissing it with leave to amend. Mr. Parks then filed an amended complaint, which is now before the Court for review pursuant to 28 U.S.C. § 1915A.

The amended complaint fails to cure the deficiencies of the original complaint. The amended complaint does not state a claim for a due process violation based on the allegedly false counseling chrono that defendant wrote. As the Court explained in the order of dismissal with leave to amend, to allege a cognizable due process claim, Mr. Parks had to allege facts showing that the falsification of the counseling chrono caused the imposition of an atypical and significant hardship or inevitably affected the duration of Mr. Parks' confinement. In his amended complaint, Mr. Parks alleges that the presence of the counseling chrono in his central file will work to his detriment in his

1 parole consideration. However, as the Court explained in the order of dismissal with leave to
2 amend, the possible effect of a report of prison misconduct on later parole consideration is simply
3 too speculative to meet the *Sandin* test for a protected liberty interest. *See* Docket # 4 at 4-5 (citing
4 *Sandin v. Conner*, 515 U.S. 472, 487 (1995)). The due process claim must be dismissed.

5 Mr. Parks contends in his amended complaint that C/O Williams was deliberately indifferent
6 to his medical needs because C/O Williams ordered him out of the shower that he really needed
7 because he had earlier used recalled soap, had a “neuro-virus,” had soiled himself with his own
8 feces. As explained in the order of dismissal with leave to amend, “[t]he fact that the soap was
9 recalled due to trace amounts of a carcinogen does not suggest a serious medical need for an inmate
10 who had used it.” *See* Docket # 5 at 3. As also explained in the order of dismissal with leave to
11 amend, his alleged condition of having a neuro-virus does not show deliberate indifference because,
12 when Mr. Parks claimed to have a right to shower for his neuro-virus, C/O Williams allegedly asked
13 to see a permission slip for a shower and Mr. Parks did not produce any chrono or authorization for
14 him to shower. *See id.* at 4. (As the Court noted, the inmate ducat Mr. Parks claimed authorized the
15 shower plainly was for a “BP check” rather than a shower, and was for the day before the shower
16 incident. *Id.* *See Gant v. Wallingford Bd. of Educ.*, 69 F.3d 669, 674 (2d Cir. 1995) (document
17 attached document will be read to evidence what it incontestably shows once one assumes that it is
18 what the complaint says it is or that it is what it appears to be). Finally, the allegation that he was
19 written up for showering when he had feces on him does not show a cognizable claim for deliberate
20 indifference to his medical needs, as he alleges that he already was showering when C/O Williams
21 told him to get out of the shower and wrote up the counseling chrono. The counseling chrono
22 written after-the-fact did not amount to deliberate indifference to a serious medical need.) The
23 amended complaint fails to allege an Eighth Amendment claim for deliberate indifference to Mr.
24 Parks’ serious medical needs.

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For the foregoing reasons, this action is **DISMISSED** because the amended complaint fails to state a claim upon which relief may be granted. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: October 9, 2013


EDWARD M. CHEN
United States District Judge