

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HOWARD AYERS,

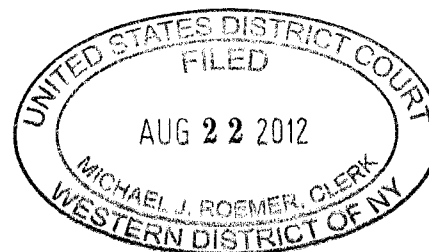
Plaintiff,

-v-

DECISION AND ORDER
12-CV-0656A

J. ESGROW, Hearing Officer (CHO); L.FRIOT,
SCC; D. VENETTOZZI, Acting Director (SHU);
and A. PRACK, Director Special Housing Unit,

Defendants.



Plaintiff, who is a prisoner housed at Attica Correctional Facility, has filed this action under 42 U.S.C. § 1983, and has paid the filing fee. Plaintiff's complaint has been screened by the Court with respect to the 28 U.S.C. § 1915A criteria.

Plaintiff is challenging a Tier III disciplinary hearing that concluded on July 12, 2011 with a guilty disposition, and a penalty of six months of solitary confinement and loss of privileges and six months recommended loss of good time. Plaintiff, who is serving a sentence of 25 years to life,¹ is not eligible to earn good time credit, and is not challenging the duration of his confinement. N.Y. Correct. Law § 803(1)(a). For this reason, plaintiff's challenge to the disciplinary proceeding may proceed forward without requiring him to waive any challenge to sanctions that affect the duration of his confinement. *See Peralta v. Vasquez*, 467 F.3d 98 (2d Cir. 2006); *Parra v. Fischer*, 2012 WL 3069952, at *3 (W.D.N.Y. 2012), citing *Gomez v. Kaplan*, No. 94 Civ. 3292, 2000 WL 1458804, at *12 (S.D.N.Y. Sept. 29, 2000) ("Since Gomez is serving a sentence with a maximum term of life,

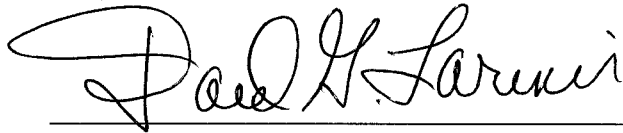
¹ Plaintiff's sentencing information is listed on the website of the New York State Department of Corrections and Community Supervision at <http://nysdoccslookup.doccs.ny.gov>.

he may not receive time allowance against the term of his sentence. Accordingly, the deprivation of good-time credit . . . is meaningless.”).

The Clerk of the Court is directed to issue summonses for service of the complaint by plaintiff on each defendant. The Clerk is also directed to send plaintiff the form Notice Regarding Service of the Summons and Complaint and an application to request service by the U.S. Marshal. Plaintiff may file a request for service by the U.S. Marshal if he wishes to do so.

Pursuant to 42 U.S.C. § 1997e(g)(2), the defendants are directed to answer the complaint.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

DATED: August 20, 2012
Rochester, New York