

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|------------------------------|---|--------------|
| PROSENO WAGNER | : | CIVIL ACTION |
| | : | NO. 10-2513 |
| v. | : | |
| | : | |
| COUNTY OF MONTGOMERY, et al. | : | |

ORDER

AND NOW, this 4th day of September, 2014, upon consideration of defendants' motion to dismiss plaintiff's second amended complaint, Dkt. No. 35, and plaintiff's response thereto, Dkt. No. 39, it is ORDERED that defendants' motion is GRANTED IN PART and DENIED IN PART as follows, consistent with the accompanying memorandum of law:

- 1) Defendants' motion is DENIED without prejudice to the extent that it seeks dismissal of plaintiffs' claims on the basis of qualified immunity.
- 2) Defendants' motion is GRANTED to the extent that it seeks to dismiss plaintiff's claims that defendants violated plaintiff's rights under the Eighth Amendment. Plaintiff's Eighth Amendment claims are DISMISSED in their entirety.
- 2) Defendants' motion is GRANTED to the extent that it seeks dismissal of plaintiffs' claims against defendant Montgomery County Correctional Facility. Plaintiff's claims against Montgomery County Correctional Facility are DISMISSED.
- 3) Defendants' motion is GRANTED to the extent that it seeks dismissal of plaintiffs' claims against defendant Montgomery County. Plaintiff's claims against Montgomery County are DISMISSED with leave to amend to the extent that he can sufficiently plead the existence of a County policy or custom or a pattern of violations by the County.

- 4) Defendants' motion is GRANTED to the extent that it seeks dismissal of plaintiffs' claims against defendants Warden Julio Algarin and Deputy Warden Dennis Molynoux. Plaintiff's claims against Algarin and Molynoux are DISMISSED with leave to amend to the extent that he can plead their personal involvement with particularity.

It is FURTHER ORDERED that, as plaintiff has withdrawn Count IV of his second amended complaint which asserts a claim for common law negligence against all defendants, that claim is DISMISSED without prejudice.

It is STILL FURTHER ORDERED that, consistent with the foregoing, plaintiff may file a third amended complaint on or before September 22, 2014. If plaintiff elects not to file a third amended complaint, he shall file a notice of his intent to stand on the remaining claims in his amended complaint on or before September 22, 2014.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.