

In the instant case, this court finds that any appeal is frivolous and will not order a trial transcript. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: November 17, 2009.

Defendants have made a motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 52(c). That rule permits the court to enter judgment if a party has been fully heard on an issue during a nonjury trial, and requires the court to make findings of fact and conclusions of law as required by Rule 52(a).

The court makes the following findings of fact in this case.

1. At all relevant time, Plaintiff was incarcerated at SCI-Huntingdon.
2. Plaintiff filed his complaint on June 12, 2008 naming as Defendants Jeffrey Beard, Raymond Lawler, C. Wakefield, and Timothy Yutzy.
3. Plaintiff's complaint alleges that he was subject to overcrowding, extreme temperatures, inappropriate ventilation, inappropriate emissions of smoke from the smoke stack in the yard, dust, inappropriate sanitation, pests, insects, and rodents. Plaintiff alleges that these conditions violate the 8th and 14th Amendments to the U.S. Constitution.
4. Plaintiff properly exhausted the following claims: his claim of inappropriate ventilation, emissions of smoke into the recreation yard, and rodent infestation. No other claims were properly exhausted.
5. Those claims that were properly exhausted were only exhausted as to Defendants Raymond Lawler and Timothy Yutzy. Plaintiff did not exhaust any claims as to the other Defendants.
6. During Plaintiff's presentation of his case, he adduced no evidence of any personal involvement by either Defendant Lawler or Defendant Yutzy concerning any of the aforesaid claims.
7. During Plaintiff's presentation of his case, he adduced no evidence of any harm caused to him as a result of these conditions.

8. Plaintiff introduced no medical or scientific evidence demonstrating that the conditions that he complained of will cause him any harm in the future.
9. Plaintiff introduced no evidence that Defendants deprived him of any of his basic human needs, such as food, clothing, shelter, sanitation, medical care and personal safety from physical assault.

The court makes the following conclusions of law:

1. The court finds that those claims not properly exhausted are dismissed with prejudice.
2. All claims against Defendants Jeffrey Beard and C. Wakefield are dismissed with prejudice because Plaintiff failed to properly exhaust his administrative remedies as them.
3. As to the remaining Defendants, Plaintiff has failed to establish a violation of the 14th Amendment to the United States Constitution. Consistent with the Supreme Court's decision in *Albright v. Oliver*, 510 U.S. 266, 233 (1994) the court concludes that Plaintiff's claim in this case is one for a violation of the Eighth Amendment because it is that Amendment that "provides an explicit textual source of constitutional protection" against the harm alleged by Plaintiff in this case.
4. As to the remaining Defendants, Plaintiff has failed to establish a violation of the 8th Amendment to the United States Constitution. Plaintiff's claim in this case was brought pursuant to 42 U.S.C. § 1983, which requires, among other things, that Plaintiff demonstrate that each of the Defendants was personally involved in causing the harm he alleges. Because Plaintiff has adduced no evidence that any of the Defendants in this case was personally involved with any of his claims, Plaintiff has failed to meet his burden of proof.

5. The court finds that although there is some evidence that the conditions at SCI-Huntingdon are causing discomfort to Plaintiff, there is insufficient evidence before this court to find that they rise to the level of depriving Plaintiff of the minimal civilized measures of life's necessities. Because this is the standard by which the court gauges whether the Eighth Amendment has been violated, the court finds no violation.
6. The court therefore finds in favor of all Defendants and directs the clerk of court to enter judgment for Defendants and against Plaintiff under Rule 52(c) of the Federal Rules of Civil Procedure.