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United States District Court,
M.D. Pennsylvania.

Joseph BOWEN, Plaintiff
v.
Joseph RYAN, John Stepanik, Kenneth Kyler, Frederick K. Frank, A.S. Williamson, G.N. Patrick, C.R. Myers, Frank D. Gillis, R.E. Johnson, B.L. Lane, J. Piazza, Jeffrey A Beard, Davi T. Owens, Raymond Clymer, Joseph Lehman, and Martin F. Horn, Defendants

No. 3:05CV1512. | Nov. 29, 2006.

Attorneys and Law Firms

Joseph Bowen, Coal Township, PA, pro se.

Debra S. Rand, Department of Corrections, Office of Chief Counsel, Camp Hill, PA, for Defendants.

Opinion

MEMORANDUM

MUNLEY, J.

***1** Before the court are plaintiff's objections (Doc. 38) to Magistrate Judge Malachy E. Manion's report and recommendation (Doc. 37). The matter has been fully briefed and is ripe for decision.

Background

On July 29, 2005, plaintiff filed a *pro se* civil rights action with this court pursuant to 42 U.S.C. § 1983. (Complaint (Doc. 1)). Plaintiff is an inmate at the Pennsylvania State Correctional Institution, Coal Township (SCI-Coal Township). Plaintiff's complaint alleged that the defendants had placed him in administrative custody without the benefit of due process. (*Id.* at 7). He has remained in this restricted confinement for twenty years, without ever receiving meaningful review of that status. (*Id.* at 9). Plaintiff lacked proper review of his status because he had been placed on the Restricted Release List (RRL), which meant that he could not be released into the general population through normal administrative procedures. (*Id.* at 10). Plaintiff contends the prison changed policy on such matters in March 2004. (*Id.* at 16). This change in policy meant that plaintiff lost all of his rights to appeal his status in administrative custody, which he claims violated his due process rights. (*Id.* at 17). The body that originally had power to determine whether he remained in administrative custody, the Program Review Committee (PRC) lost its power to order the removal of a prisoner from the RRL. (*See* Pennsylvania Department of Corrections Policy Number DC-ADM 802 (Doc. 15) ("DC-ADM 802")). After the changes in this policy, the PRC could only recommend to the Secretary of the Department of Corrections or his designee that a prisoner be removed from the RRL. (*Id.* at H(4)(C)). Plaintiff contends that these changes in policy deprived him of his due process rights.

These conditions of confinement led plaintiff to suffer from "extreme mental anguish, weight loss, sensory deprivation, depression, stress, fatigue, insomnia," and loss of contact with his family. (Complaint (Doc. 1) at 11-12). Plaintiff sought an order from the court removing him from the restricted release list and administrative custody, a due process hearing on his confinement, and notice to all prisoners in administrative custody whose names appear on the restricted release list. (*Id.* at 29). Plaintiff also sought at least $100,000 in compensatory damages from each of the 16 named defendants. (*Id.* at 30-31). He asked for similar amounts of punitive damages. (*Id.* at 32).

On November 1, 2005, defendants moved to dismiss the plaintiff's complaint. (Doc. 13). The plaintiff responded to defendants' brief by filing a motion for summary judgment (Doc. 18) and a brief in support of that motion. (Doc. 19). The Magistrate Judge construed this document as a motion for judgment on the pleadings. (Doc. 37 at 2). On July 6, 2006, plaintiff filed four motions for temporary restraining orders and supporting briefs. (Docs.28-35).

***2** On September 8, 2005, Magistrate Judge Mannion issued a report and recommendation. (Doc. 37). Judge Mannion recommended that the defendants' motion to dismiss the plaintiff's complaint be granted in part and denied in part. (*Id.* at 21). He found that any claims related to plaintiff's initial placement in administrative custody and initial placement on the restrictive release list were barred by the statute of limitations. (*Id.* at 8). The Judge likewise found plaintiff's Eighth Amendment claims for placement on the restricted release list barred by the statute of limitations. (*Id.*). Magistrate Judge Mannion held that plaintiff's complaint challenging a May 2004 amendment to prison regulations were not time barred. (*Id.*). He nevertheless found that

those regulations were not invalid under the Pennsylvania Commonwealth Documents Law. (*Id.* at 19). The Magistrate Judge held that defendant's motion to dismiss the complaint for failure to exhaust administrative remedies was improper without discovery, since there was insufficient evidence to determine plaintiff's use of administrative remedies. (*Id.* at 9). The defendants did not object to this finding. The Judge also recommended that plaintiff's motion for judgment on the pleadings be denied, and that plaintiff's motions for temporary restraining orders be dismissed. (*Id.* at 21). Because the Magistrate Judge recommended that we either bar plaintiff's claims on statute of limitations grounds or dismiss them for failure to state a claim upon which relief could be granted, the effect of our adopting his report and recommendation would be to dismiss the case. For the following reasons, we will do so.

Legal Standard

In disposing of objections to a magistrate judge's report and recommendation, the district court must make a *de novo* determination of those portions of the report to which objections are made. 28 U.S.C. § 636(b)(1)(C); *see also Henderson v. Carlson*, 812 F.2d 874, 877 (3d Cir.1987). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The district court judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. *Id.* When no objections to a portion of the report and recommendation have been filed, we must determine whether a review of the record evidences plain error or manifest injustice to decide whether to adopt the report. *See, e.g., Sullivan v. Cuyler*, 723 F.2d 1077, 1085 (3d Cir.1983); FED. R. CIV. P. 72(b) 1983 Advisory Committee Notes ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record to accept the recommendation"); 28 U.S.C. § 636(b)(1).

Here, the court ruled on the defendant's motion to dismiss the complaint for failure to state a claim under FED. R. CIV. PRO. 12(b)(6). When a 12(b)(6) motion is filed, the sufficiency of a complaint's allegations are tested. The issue is whether the facts alleged in the complaint, if true, support a claim upon which relief can be granted. In deciding a 12(b)(6) motion, the court must accept as true all factual allegations in the complaint and give the pleader the benefit of all reasonable inferences that can fairly be drawn therefrom, and view them in the light most favorable to the plaintiff. *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir.1997).

Plaintiff's Objections

***3** We will address each of the plaintiff's objections to Magistrate Judge Mannion's report and recommendations in turn.

A. The Magistrate Judge's Finding that Plaintiff's Complaint Was Barred by the Applicable Statute of Limitations

Plaintiff objects to the Magistrate Judge's finding that plaintiff's challenge to his initial placement on the Restricted Release List and in administrative custody is barred by the two-year statute of limitations for § 1983 claims in Pennsylvania. (Report and Recommendation at 7). Plaintiff argues that he "had no knowledge that an [sic] Restricted Release List [e]xisted, until he was informed by the staff at SCI-Coal Township prior to the filing of this action." (Plaintiff's Objections at 4). He admits, however, that "he was put on the Restricted Release List in 1984 when he was transferred to SCI-Dallas," and that he considers this a "continuing violation of the Eight [sic] and Fourteenth amendment." (*Id.*).

We cannot agree with plaintiff's objection to this finding. Plaintiff admits that his initial placement the Restricted Release List came in 1984, and he does not offer a date on which he became aware of that listing. Plaintiff brings this case under 42 U.S.C. § 1983. Under that statute, state law applies when determining the appropriate statute of limitations "if it is not inconsistent with federal law or policy to do so." *Wilson v. Garcia*, 471 U.S. 261, 265, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). For cases brought in Pennsylvania, "all § 1983 claims should be characterized for statute of limitations purposes as actions to recover damages for injuries to the person." *Springfield Township School District v. Knoll*, 471 U.S. 288, 289, 105 S.Ct. 2065, 85 L.Ed.2d 275 (1985). Applying that principal, Pennsylvania law requires that the plaintiff commence his action within two years of his injury. *See* 42 PA. CONS.STAT. § 5524(7) (establishing a two-year statute of limitations for "any ... action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct").

Plaintiff apparently argues that he was not aware of his status on the restricted release list until informed by the staff of SCI

Coal Township, and that this lack of knowledge means that the statute of limitations on his 1984 placement on that list had not run. (Doc. 38 at 4). Pennsylvania courts have ruled that the statute of limitations begins to run in cases where an injury is ongoing "when the plaintiff knows, or reasonably should know: (1) that he has been injured, and (2) that his injury has been caused by another party's misconduct." *Cathcart v. Keene Indus. Insulation,* 324 Pa.Super. 123, 471 A.2d 493, 500 (Pa.Super.Ct.1984). The injury of which plaintiff claims-lack of due process in the evaluation of his status-is based on his status on the Restricted Release List. Being on that list, he claims, meant that he could never be released through the normal administrative process. (Plaintiff's Objections (Doc. 38) at 4-5). Plaintiff alleges that he did not become aware of this roadblock to release from administrative custody until the time he began to prepare his suit. We disagree that this lack of knowledge of the RRL means that the statute of limitations had not run. Plaintiff's injury was being kept on administrative custody for twenty years, not his placement on a particular list. Plaintiff had knowledge of this injury from the moment the prison placed him in such custody, and he knew that the cause of that injury was prison policy. The two-year statute of limitations thus bars plaintiff's claim about his placement on the RRL.

***4** Plaintiff's complaints about his status in administrative custody are likewise barred by the two-year statute of limitations. Plaintiff has been held in administrative custody since 1984; he was aware of his alleged injury and its source from the beginning of that period, and the statute of limitations has run. *See Sandutch v. Muroskij,* 684 F.2d 252, 254 (3d Cir.1982) (finding that continuing incarceration does not toll the statute of limitations unless there are "unlawful acts ... within the limitations period."). We will therefore adopt the Magistrate Judge's report and recommendations in relation to the statute of limitations. Adopting these recommendations disposes of all of plaintiff's claims except those related to the amendment to DC-ADM 802 in May 2004, which altered the procedures for reviewing an inmate's status in administrative custody. In order to dispose of plaintiff's claims not barred by the statute of limitations, as well as in the interest of completeness, we will examine plaintiff's other objections to the report and recommendations.

B. The Magistrate Judge's Finding that Plaintiff's Procedural Due Process Claim Should be Dismissed

Plaintiff argues that the Magistrate Judge erred in finding that he had not stated a claim that his classification on the RRL violated his due process rights. (Plaintiff's Objection to Report and Recommendations (Doc. 38) at 5). That finding would lead us to dismiss his complaint whether filed within the statute of limitations or not. Plaintiff contends that placement on the RRL meant that he was "*Reclassified* and Put on a Punitive condition of Confinement without his *Knowledge, notification* or Opportunity to challenge a classification that changed his condition of confinement to one of indefinite confinement in the RHU." (*Id.* at 5-6) (emphasis in original). Plaintiff appears to argue that the Magistrate Judge misconstrued his complaint as a challenge to the procedures used to place him in administrative confinement. (*Id.* at 6) (arguing that "plaintiff's complaint *do not* [sic] challenge his confinement (*A.C.status*) under the provisions set forth in DC-ADM-802 (emphasis in original)). Plaintiff's true complaint, he contends was with "being subjected to an [sic] secret punitive classification (R.R.L.) [w]ithout any due process. (*Id.*).

Even if the plaintiff's complaint is with the RRL, we would still adopt the Magistrate Judge's report and recommendation on due process. [1] Prisoners enjoy due process rights, but these rights are limited by the unique demands of prisons and require a "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application." *Wolff v. McDonnel,* 418 U.S. 539, 556, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). To make out a procedural due process claim, an inmate must show that the prison's actions limited a protected liberty interest, and that procedures involved fell short of constitutional requirements. *Shoates v. Horn,* 213 F.3d 140, 143 (3d Cir.2000). Normally, transfer from one level of custody in a prison to another does not impinge a constitutionally protected interest. *Meachum v. Fano,* 427 U.S. 215, 224, 96 S.Ct. 2532, 49 L.Ed.2d 451 (holding that there is no liberty interest invoked "when a prisoner is transferred to the institution with the more severe rules."); *Hewitt v. Helms,* 459 U.S. 460, 468, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983) (finding that "the transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence"). Prisoners transferred to a more restrictive setting within a prison have a state-created liberty interest only when that confinement " 'imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." ' *Asquith v. Department of Corrections,* 186 F.3d 407, 412 (3d. Cir.1999) (quoting *Sandin v. Conner,* 515 U.S. 472, 484, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995)).

***5** Plaintiff's twenty years in administrative confinement clearly creates an "atypical and significant hardship in relation to the ordinary incidents of prison life," but that finding does not end the inquiry for purposes of procedural due process. *See Shoats*, 213 F.3d 140 (finding that eight years of confinement in administrative custody created hardship worthy of due process concern). The question then becomes what process a prison setting requires. Such process must include "some notice of the charges against [a prisoner] and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative custody." *Id.* (quoting *Hewlitt v. Helms*, 459 U.S. 460, 476, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983)). In most cases, a written statement from the prisoner challenging the reasons for his placement in a particular setting is sufficient to protect due process rights, as long as "the decision maker reviews the charges and then-available evidence" against the prisoner. *Id.*

The procedure afforded the plaintiff in relation to the Restricted Release List met these due process requirements. While the amended version of DC-ADM 802 prevents the PRC from ordering the removal of a prisoner from the RRL and thus limits the ability of that body to order the placement of a prisoner in the general population, such restrictions do not undermine the procedural rights due the plaintiff to the degree that he could make out a procedural due process claim. Plaintiff enjoys a hearing on his status every ninety days before the PRC. Before the change in policy in May 2004, plaintiff, as he admits, could challenge his status on the RRL before the Council. The PRC's review of his status provided him with sufficient notice of the charges against him and gave him adequate opportunity to challenge those charges. Transfer of the final decision on whether to remove the plaintiff from the RRL to the Secretary from the PRC does not make the procedure deficient, since plaintiff had notice in the regulations of the changed status, and an opportunity to make his case to the PRC that he no longer belonged on the list. Due Process for prisoners does not include the right to determine who the ultimate decision-maker in their cases is, but simply the right to present a case to a body that helps to determine that claim. *See Shoats*, 213 F.3d at 145 (holding that "an inmate must merely receive some notice of the charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation."). Given the minimal nature of the due process required for prisoners, we fail to see how the new procedures used by the Pennsylvania Department of Corrections undermines plaintiff's constitutional rights. We will therefore adopt the report and recommendations on this matter.

C. The Magistrate Judge's Findings Related to Plaintiff's PRC Hearing and Appeals

***6** Plaintiff contends that the Magistrate Judge erred in finding that the hearings used by the prison in restricting him to administrative confinement satisfied due process requirements. These hearings, he argues "were held in [a] rote and meaningless fashion," particularly since no procedure had been established by the department of corrections to determine that he qualified for the Restricted Release List. (Plaintiff's Objections (Doc. 38) at 7). Because he would have to be removed from the restricted release list before the administrative review could return him to the general population, plaintiff alleges that any administrative hearings were meaningless. (*Id.*). Those administrative review hearings, he argues, could not change his status, and seemed to exist merely for show. (*Id.*). Plaintiff thus contends that the hearings violated his right to due process. (*Id.*).

Plaintiff has not alleged that the periodic reviews required by the PRC regulations did not occur, or that the hearings themselves were damaged by the introduction of fraudulent testimony. Instead, he argues that the hearings were "rote" and "meaningless" because his status on the Restricted Release Lease meant that he could not be released from administrative custody by the PRC no matter what evidence he presented. This means, apparently, that the hearings themselves violated his due process rights. We note that under the terms of amended DC-ADM 802, the regulation that governs procedures for release from administrative custody, the PRC could play a role in determining whether an inmate could be released from administrative custody. *See* DC-ADM 802 VI(H)(4)(a) (holding that "the PRC may make a recommendation to the Facility Manager if it is believed that an inmate on the Restricted Release List could be safely released to the general population."). In that sense, the prison did have procedures in place that made PRC hearings more than simply a *pro forma* exercise; an inmate on the RRL could present evidence that would help cause a change in his status. In any case, the Third Circuit has determined that "the periodic reviews conducted by the PRC here comport with the minimum constitutional standards for due process." *Shoats*, 213 F.3d at 147. The plaintiff thus has no complaint about the procedures used by the PRC to review his status in administrative custody. [2] We will accordingly adopt the Magistrate Judge's recommendation on this point.

D. The Magistrate's Findings Related to Procedural Due Process

Plaintiff also attacks the Magistrate Judge's ruling on the sufficiency of the procedure used to determine his suitability for the Restricted Release List. (Plaintiff's Objections (Doc. 38) at 9). He argues that the Magistrate Judge erred by focusing on the sufficiency of the procedures used to place him in administrative custody, not to maintain him on the RRL. (*Id.*). Plaintiff complains that the Magistrate Judge failed to examine the propriety of the process that kept him on that list "for over twenty (20) years." (*Id.*). This appears to be the same objection expressed in section B, *supra.* The complaint in either case is with the procedure used to put plaintiff on the RRL. For the same reasons stated previously we will adopt the Magistrate Judge's report and recommendation on this matter.

E. The Magistrate Judge's Findings on Whether the Prison Violated the Commonwealth Document Law

***7** The plaintiff also challenges the Magistrate Judge's finding that changes to prison policy regarding who makes the decision to remove an inmate from the restricted release list did not violate Pennsylvania's Commonwealth Document Law, 45 PA. CONS.STAT. § 1101 etc. (Doc. 38 at 9-10). Plaintiff argues that "the Restricted Release List is incorporated within the Established DC:ADM [sic]: 802 Policy that is in accord with state and federal laws," and that this list constitutes "policy because it determines an inmate[']s condition of confinement." (*Id.* at 10). Plaintiff's position is that since the policy establishes a "standard of conduct" and makes conditions of confinement more onerous, it must be promulgated according to the procedures defined by the law. (*Id.*)

Under the Commonwealth Documents Law, an agency must "review and consider any written comments" and "hold such public hearing as seem appropriate" "before taking action upon any administrative regulation or change therein." 45 PA. CONS.STAT. § 1202. The key in such cases is to determine whether the prison policies in question "are in fact 'regulations' for purposes of those acts or if they are ... mere 'policy amendments' or 'internal prison management decisions." *Small v. Horn,* 554 A.2d 600, 609 (Pa.1998). A rule that "has at most an incidental effect on the general public" does not require the same participation of the public as regulations covered by the Commonwealth Documents Act. *Id.* There is "a category of agency decisions that are inherently committed to the agency's sound discretion and that cannot reasonably be subjected to the 'normal public participation process." ' *Id.* at 610 (quoting *Giant Food Stores Inc. v. Commonwealth Dep't of Health,* 713 A.2d 177, 181 (Pa.Commw.Ct.1998).

In prisons, "the curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of 'institutional needs and objectives of prison facilities." *Hudson v. Palmer,* 468 U.S. 517, 524, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984) (quoting *Wolff v. McDonnell,* 418 U.S. 539, 555, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974)). "Chief among" those institutional needs "is internal security," through "restrictions or retractions also serve, incidentally, as reminders that, under our system of justice, deterrence and retribution are factors in addition to correction.' *Hudson,* 468 U.S. at 524. A prison "must enforce reasonable rules of internal prison management to ensure public safety and prison security," and "these rules must be modified as conditions change, different security needs arise, and experience brings to light weaknesses in current security measures." *Small v. Horn,* 554 Pa. 600, 722 A.2d 664, 670 (Pa.1998); *see also Rhodes v. Chapman,* 452 U.S. 337, 350, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981) (finding that "a prison's internal security is peculiarly a matter normally let to the discretion of prison administrators").

The changes to prison policy of which plaintiff complains concerned DC-ADM 802, which covered the procedures by which a prisoner could be removed from administrative custody. Those procedures were amended in May 2004 to provide that an inmate could not be removed from the restricted release list without approval from the Secretary of the Department of Corrections or his designee. Previously, an inmate could be removed from that list by a vote of the PRC. [3] These changes are the type of policy changes not covered by the Commonwealth Documents Law, especially because, as defendant points out, the authority the PRC previously enjoyed was simply a delegation of authority properly held by the Secretary or his designee. (Defendants' Brief in Opposition to Plaintiff's Objections to Report and Recommendation (Doc. 40) at 3). The regulations relate to ordinary security measures that constitute part of the fundamental mission of prisons. The prison's decision to alter the terms of the restricted release list is decision committed to agency discretion, since that list and the administrative custody attached to it are reasonable rules of administrative security designed to protect the prisoners, prison staff, and the public. Changes to those rules reflect the response of prison officials to changing circumstances. The procedures used to

determine whether a prison should be held in administrative custody or in the general population has little, if any, impact on the public. Accordingly, the decision to change the terms of the restricted release list is not the type of agency decision that requires notice and comment. We will adopt the Magistrate Judge's report and recommendation on this point.

Other Findings by the Magistrate Judge

***8** The plaintiff does not object to the Magistrate Judge's recommendations that the court deny plaintiff's motion for a judgment on the pleadings and dismiss plaintiff's motions for temporary restraining orders. The defendants did not object to the Magistrate Judge's recommendation that plaintiff's claims related to the May 2004 DC-ADM 802 were not barred by the statute of limitations. When a party fails to object to a portion of a Magistrate Judge's report and recommendation we must determine whether a review of the record evidences plain error or manifest injustice in order to determine whether to adopt the Magistrate Judge's findings. *See, e.g., Sullivan v. Cuyler*, 723 F.2d 1077, 1085 (3d Cir.1983); FED. R. CIV. P. 72(b) 1983 Advisory Committee Notes ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record to accept the recommendation"); 28 U.S.C. § 636(b)(1). We find neither plain error nor manifest injustice in these findings, and we will adopt the report and recommendations.

Motion for Appointment of Counsel

On September 26, 2006 plaintiff filed a motion for appointment of counsel in this case (Doc. 39). Because we today adopt the report and recommendation of the Magistrate Judge and dismiss this case, we will deny the plaintiff's motion as moot.

ORDER

AND NOW, to wit, this *29th* day of November 2006, it is hereby ordered as follows:

1) The plaintiff's objections to the Magistrate Judge's report and recommendations (Doc. 38) are hereby OVERRULED;

2) The report and recommendation (Doc. 37) is ADOPTED;

3) Plaintiff's complaint (Doc. 1) is DISMISSED;

4) Plaintiff's motion for appointment of counsel (Doc. 39) is DENIED as moot; and

5) The clerk of court is directed to close the case.

REPORT AND RECOMMENDATION

MANNION, Magistrate J.

Presently pending before the court are: (1) the defendants' motion to dismiss the plaintiff's complaint, (Doc. No. 13); (2) the plaintiff's motion for summary judgment, construed by the court as a motion for judgment on the pleadings, (Doc. No. 18); and (3) four motions for temporary restraining orders filed by the plaintiff, (Doc. Nos.28, 30, 32, 34).

By way of relevant background, on July 29, 2005, the plaintiff, an inmate at the State Correctional Institution, Coal Township, ("SCI-Coal Township"), Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. No. 1). On August 11, 2005, the plaintiff submitted the proper filing fee. (Doc. No. 5).

By order dated August 12, 2005, it was directed that process issue. (Doc. No. 6).

On November 1, 2005, the defendants filed a motion to dismiss the plaintiff's complaint, (Doc. No. 13), along with a supporting brief, (Doc. No. 14), and an appendix, (Doc. No. 15). [1] Rather than file a brief in opposition to the defendants' motion to dismiss, on November 10, 2005, the plaintiff filed what he termed as a motion for summary judgment, (Doc. No. 18), along with a supporting brief, (Doc. No. 19). No materials outside of the pleadings were submitted in support of this motion. Moreover, the only argument raised in the motion is that the plaintiff has alleged sufficient personal involvement on behalf of each of the defendants to proceed under § 1983. As such, the court construes the plaintiff's motion as one for judgment on the pleadings.

***9** On July 6, 2006, the plaintiff filed four separate motions for temporary restraining orders, each with supporting briefs. (Doc. Nos.28-35).

Defendants' motion to dismiss is brought pursuant to provisions of Fed.R.Civ.P. 12(b)(6). This rule provides for the dismissal of a complaint, in whole or in part, if the plaintiff fails to state a claim upon which relief can granted. Dismissal

should only occur where it appears that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). Accordingly, dismissal is appropriate "only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." *Trump Hotel and Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 483 (3d Cir.1998)(citing *ALA, Inc. v. CCair, Inc.*, 29 F.3d 855, 859 (3d Cir.1994)).

In deciding a motion to dismiss, a court should generally consider only the allegations contained in the complaint, the exhibits attached to the complaint, matters of public record, and "undisputably authentic" documents which plaintiff has identified as the basis of his claim. *See Pension Benefit Guarantee Corp. v. White Consolidated Industries, Inc.*, 998 F.2d 1192, 1196 (3d Cir.1993).

It must also be remembered that when considering a motion to dismiss under Rule 12(b)(6), the important inquiry is not whether the plaintiff will ultimately prevail on the merits of his claim, but only whether he is entitled to offer evidence in support of them. *Scheuer v. Rhodes*, 416 U.S. 233, 236 (1974).

To the extent that the court construes the plaintiff's motion for summary judgment as a motion for judgment on the pleadings, there is no material difference in the applicable legal standards for dismissing a complaint pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted and pursuant to Fed.R.Civ.P. 12(c) for judgment on the pleadings. *See Spruill v. Gillis*, 372 F.3d 218 (3d Cir.2004).

According to the plaintiff's complaint, he was transferred to SCI-Dallas on October 31, 1984, and placed in administrative custody status. On the following day, he received a hearing before the Program Review Committee, ("PRC"), at which his request to be released from administrative custody was denied. On the same day, the plaintiff alleges that he was transferred out of administrative custody status, and placed in "punitive punishment [2] permanent lockdown custody status, under the control of a second (new) Policy directive called the Restricted Release List." The plaintiff alleges that his placement on the Restricted Release List violated his right to due process because he did not receive any advance written notice or a written statement of the reasons why this "disciplinary" action was taken.

***10** The plaintiff alleges that he has been on the Restricted Release List and confined in administrative custody for a period of over 20 years. While he admits that he has received PRC hearings and appeals, he alleges that, as long as he is on the Restricted Release List, the Superintendent at any facility where he is confined has no authority under DC-ADM 802 to release him into the general population. Therefore, the plaintiff alleges that any hearings or appeals are "rote" and "meaningless."

On or about March 8, 2004 the plaintiff alleges that DC-ADM 802 was amended, effective May 5, 2004. According to the plaintiff, the amended DC-ADM 802 is illegal because it incorporates the provisions with respect to the Restricted Release List. He further alleges that the amendment was not properly promulgated in accordance with the Commonwealth Documents Law, 45 P.S. § 1101, *et seq.*, and is, therefore, null and void.

Finally, the plaintiff alleges that the amendment "terminated" his PRC hearing and appeal rights. To this extent, the plaintiff states:

> What this means is that, all of plaintiff (AC) administrative custody P.R.C. hearings under Policy:DC:ADM:802 are all just rote fashion, perfunctory in manner, and meaningless in substance, because the Superintendent of Prisons where the Plaintiff is housed has (no) authority under Poicy:DC:ADM:802 to release this plaintiff back into general population through an (AC) administrative custody P.R.C. hearings, why, because the plaintiff is on the Restricted Release List. What this means is that, all of plaintiff (AC) administrative custody appeals are all just rote fashion, perfunctory in manner, and meaningless in substance, because the Superintendent of Prisons where the plaintiff is housed has (no) authority under Policy:DC:ADM:802, to release this plaintiff out of the hole and back into general population through a appeal request slip at (no) time,

> why, because the plaintiff is on the Restricted Release List."

As a result of his continued confinement in administrative custody, the plaintiff alleges that he has suffered "... extreme mental anguish, weight loss, sensory deprivation, depression stress, fatigue, insomia (sic), loss of some of his general population privileges, including contact visits with his family ..."

The plaintiff alleges that his placement on the Restricted Release List and continued confinement in administrative custody are in violation of his Eighth, and Fourteenth Amendment rights.[3] He is seeking various forms of injunctive relief, as well as compensatory and punitive damages.

In their motion to dismiss the plaintiff's complaint, the defendants first argue that any of the plaintiff's claims accruing before July 29, 2003, are barred by the applicable statute of limitations. (Doc. No. 14, pp. 4-5).

In *Wilson v. Garcia*, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985), the Supreme Court held that § 1983 actions were governed by "the one most appropriate statute of limitations [in each state's laws] for all § 1983 claims." The Court later added that "all § 1983 claims should be characterized by statute of limitations purposes as actions to recover damages for injuries to the person." *Springfield Twp. School Dist. v. Knoll*, 471 U.S. 288, 105 S.Ct. 2065, 85 L.Ed.2d 275 (1985). Thus, § 1983 actions instituted in Pennsylvania are governed by the two-year limitations period for personal injury actions set forth in PA.CONS.STAT.ANN. § 5524. *Knoll v. Springfield Twp. School Dist.*, 763 F.2d 584 (3d Cir.1985).

***11** To the extent that the plaintiff challenges his initial placement on the Restricted Release List and in administrative custody, this first occurred back in 1984. As this alleged violation occurred well before July 29, 2003, two years prior to the plaintiff's filing of the instant action, any claim relating to the violation is barred by the applicable statute of limitations.[4] Therefore, the defendants' motion to dismiss the plaintiff's complaint should be granted to this extent.

Similarly, any Eighth Amendment claim based upon the plaintiff's placement on the Restricted Release List and in administrative custody prior to July 29, 2003, would also be barred by the statute of limitations, and should be dismissed.

Finally, to the extent that the plaintiff challenges the amendment to DC-ADM 802, which was issued on March 8, 2004, and made effective May 5, 2004, this claim did not accrue prior to July 29, 2003, and is, therefore, not barred by the statute of limitations.

The defendants next argue that the plaintiff's complaint should be dismissed for his failure to exhaust administrative remedies. (Doc. No. 14, pp. 5-6).

With respect to this argument, the Third Circuit has held that failure to exhaust administrative remedies is an affirmative defense to be pleaded and proven by the defendant. *Ray v. Kertes*, 285 F.3d 287, 293 n. 5 (3d Cir.2002). Moreover, the court has found that dismissal of a plaintiff's claims for failure to exhaust on a motion to dismiss, rather than a motion for summary judgment, was improper where there was insufficient evidence without discovery to conclude that plaintiff had failed to exhaust. *See Brown v. Croak*, 312 F.3d 109 (3d Cir.2002). *See also Greer v. Smith*, 2003 WL 1090708 (3d Cir. (Pa.))(where the defendants submit materials outside of the pleadings in conjunction with an exhaustion defense the court must convert the motion to one for summary judgment). Therefore, at this juncture of the proceedings, the defendants' motion to dismiss should be denied to the extent that they argue that the plaintiff has failed to exhaust his administrative remedies.

Finally, the defendants argue that the plaintiff has failed to state a substantive claim upon which relief can be granted. (Doc. No. 14, pp. 6-12).

With respect to the plaintiff's due process claim, a procedural due process analysis involves a two step inquiry: (1) does the complaining party have a protected liberty or property interest and, if so, (2) does the available process comport with all constitutional requirements. *Shoats v. Horn*, 213 F.3d 140, 143 (3d Cir.2000).

Under the first step of the procedural due process analysis, a liberty interest can arise in one of two ways: (1) it can be derived directly from the Due Process Clause of the Federal Constitution, or (2) it can arise from the law of the state. *Asquith v. Department of Corrections*, 186 F.3d 407, 408 (3d Cir.1999).

It is well established that there is no liberty interest created directly by the Fourteenth Amendment that requires or permits an inmate to be placed in and/or to remain in the general population of a jail. *See Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983); *Meachum v. Fano*, 427 U.S. 215, 223-27, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976). Therefore, the plaintiff has no liberty interest arising from the Due Process Clause that would prevent his placement in administrative custody. It must then be determined whether the plaintiff has a state created liberty interest.

***12** In *Sandin v. Connor*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), the United States Supreme Court addressed the issue of state created liberty interests. In doing so, the Court held that a state government "may under certain circumstances create liberty interests which are protected by the Due Process Clause. But these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 483. Whether an inmate has suffered an "atypical and significant hardship" as a result of confinement depends on two factors: (1) the amount of time an inmate was placed in disciplinary segregation; and (2) whether the conditions of his confinement in disciplinary segregation were significantly more restrictive than those imposed on other inmates in solitary confinement. *Shoats*, 213 F.3d at 144.

In *Shoats*, *supra*, the court found an atypical and significant hardship where inmate had spent eight years in solitary confinement. Given this, it is clear that the plaintiff's placement in administrative custody for a period of over twenty years would impose an atypical and significant hardship in relation to the ordinary incidents of his prison sentence sufficient to give rise to a state created protected liberty interest. The issue then becomes whether the plaintiff received the process he was due for his confinement.

In *Shoats*, the Third Circuit set forth what due process requirements must be afforded to long term administrative custody inmates. As previously discussed, in that case, the inmate had been confined in administrative custody for over eight years, with the possibility of confinement for the rest of his life. Despite this, the Third Circuit determined that the plaintiff had received all the due process protections to which he was entitled because he had received periodic review of his administrative custody status through DC-ADM 802. *Shoats*, 213 F.3d at 146. Moreover, the court noted that the plaintiff was confined in administrative custody because he was "in the considered judgment of all the prison professionals who have evaluated him, a current threat to the security and good order of the institution, and to the safety of other people." *Id.* at 146. This determination was based on both the inmate's history and on "prison professionals' current impressions of him based on their day-to-day dealings with him over time." *Id.* The *Shoats* court stated:

> In assessing the seriousness of a threat to institutional security, prison administrators necessarily draw on more than the specific facts surrounding a particular incident; instead, they must consider the character of the inmates confined in the institution, recent and longstanding relations between prisoners and guards, prisoners inter se, and the like. In the volatile atmosphere of a prison, an inmate easily may constitute an unacceptable threat to the safety of other prisoners and guards even if he himself has committed no misconduct; rumor, reputation, and even more imponderable factors may suffice to spark potentially disastrous incidents. The judgment of prison officials in this context, like that of those making parole decisions, turns largely on purely subjective evaluations and on predictions of future behavior.

***13** *Id.*

Given the court's language in *Shoats*, the length of time spent in administrative custody is not, alone, an indication of a due process violation. Instead, the inmate's situation, as a whole, must be examined.

Here, the plaintiff admits that he had hearings and appeals pursuant to the provisions set forth in DC-ADM 802. He argues, however, that they were "rote" and "meaningless" because the PRC does not have the authority to release him. Prior to May of 2004, the PRC could make the decision to release an inmate on the Restricted Release List into the general population. Effective May 5, 2004, however, DC-ADM 802 was amended to provide that inmates whose names

appear on the Restricted Release List cannot be released from administrative custody without the approval of the Secretary of the DOC or his designee.[5] This amendment simply recalled the prior delegation of authority to the PRC to determine if an inmate on the Restricted Release List could be released into the institution's general population. Because the PRC can still recommend the plaintiff's release to general population, the reviews provided by DC-ADM 802 are not "rote" or "meaningless."

Moreover, the decision to maintain the plaintiff's administrative custody status, according to the records before the court, is due to his own history. To this extent, the PRC has indicated:

> PRC believes that if Mr. Bowen were released into the general population he would be a threat to the safety and security of this institution. This determination is based on a record review that documents a significant history of extreme violence. There are numerous incidents of attempted escapes and creating institutional disorder. Documented incidents demonstrate that he will go to any length to achieve what he wants and they also demonstrate his blatant disregard for the lives of others. Some of the incidents resulted in the death of Corrections staff members.

(Doc. No. 15, Ex. 2).

Court records indicate that the plaintiff was convicted and sentenced in 1973 in the Philadelphia County Court of Common Pleas on two counts of first degree murder. These convictions were for the murder of the warden and deputy warden at Holmesburg Prison committed when the plaintiff attempted to escape.[6] (Doc. No. 15, Ex. 3). In addition, the plaintiff was convicted of kidnaping and holding for ransom in Montgomery County. With respect to this conviction, while at Graterford in 1981, the plaintiff took hostages, both staff and inmates, and held them for five days by using firearms.

Considering all of the above, the plaintiff's continued confinement in administrative custody comports with the procedural due process requirements upheld by the Third Circuit in *Shoats*. It is not for the court to second guess prison officials' decision with respect to security issues. *See e.g., Rhodes v. Chapman*, 452 U.S. 337, 349 n. 14, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981)("a prison's internal security is peculiarly a matter normally left to the discretion of prison administrators."). Therefore, the defendants' motion to dismiss the plaintiff's procedural due process claim should be granted.

***14** To the extent that the plaintiff argues that his placement in administrative custody for a period of over 20 years is in violation of his Eighth Amendment rights, the Eighth Amendment, which prohibits the infliction of cruel and unusual punishment, guarantees that prison officials must provide humane conditions of confinement. Pursuant to the Eighth Amendment, prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must "take reasonable measures to guarantee the safety of the inmates." *Farmer v. Brennan*, 511 U.S. 825, 832, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)(quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984)).

In order to state an Eighth Amendment claim, the plaintiff must establish that the condition, either alone or in combination with other conditions, deprived him of "the minimal civilized measure of life's necessities," or at least a "single, identifiable human need." *Wilson Seiter*, 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991) (citations omitted). Moreover, the plaintiff must establish deliberate indifference to prison conditions on the part of prison officials. *Farmer*, 511 U.S. at 833; *Wilson*, 501 U.S. at 297. This second prong requires the court to subjectively determine whether prison officials acted with a sufficiently culpable state of mind. *Id.* "[O]nly the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Farmer*, 511 U.S. at 834.

The plaintiff alleges that his placement in administrative custody for a period in excess of twenty years has caused him to suffer "... extreme mental anguish, weight loss, sensory deprivation, depression stress, fatigue, insomia (sic), loss of some of his general population privileges, including contact visits with his family, ..." (Doc. No. 1, pp. 11-12).

The fact that the plaintiff was confined in administrative custody, itself, does not state a claim upon which relief may be granted. *See Griffin v. Vaughn*, 112 F.3d 703 (3d Cir.1997)(restrictive conditions in administrative custody

in the Pennsylvania state correctional institutions, in and of themselves, do not violate the Eighth Amendment). Moreover, the fact that the plaintiff was deprived those privileges afforded those in the general population does not constitute a deprivation of "the minimal civilized measure of life's necessities." Therefore, the plaintiff has failed to sufficiently set forth an Eighth Amendment claim, and the defendants' motion to dismiss should be granted on this basis.

To the extent that the plaintiff alleges a violation of the Commonwealth Documents Law, this law sets forth procedures which must be followed any time an administrative agency, such as the DOC, issues binding regulations. *Small v. Horn,* 722 A.2d 660, 668-69 (Pa.1998). In determining whether a cause of action has been stated under the Commonwealth Documents Law, the court must first determine whether the policy at issue is, in fact, a regulation for purposes of the Commonwealth Documents Law, or if it constitutes a mere policy amendment or internal management decision. *Id.* at 669.

***15** In *Small,* the Pennsylvania Supreme Court addressed a situation where the Department of Corrections had issued two "bulletins" that limited the nature of garments that inmates were allowed to wear and possess. Several inmates challenged the "bulletins," arguing that they were "regulations," which should have been promulgated pursuant to the notice-and-comment provisions of the Commonwealth Documents Law. The Pennsylvania Supreme Court stated that "the authority to make rules concerning the management of state correctional institutions can fairly be implied from [the DOC's] enabling statute."[7] *Id.* Further, the court cited language from *Independent State Store Union v. Pennsylvania Liquor Control Board,* 495 Pa. 145, 432 A.2d 1375 (Pa.1981), to come to the conclusion that:

> The Court thus recognized a category of agency decisions that are inherently committed to the agency's sound discretion and that cannot reasonably be subjected to the "normal public participation process." In other words, the Court "acted to prevent the regulatory process from being used as a means to micromanage [state] liquor stores." *Small,* 722 A.2d at 669.

The court found that the DOC's restrictions on inmate clothing fell into this category, stating:

> Because of the unique nature and requirements of the prison setting, imprisonment 'carries with it the circumscription or loss of many significant rights ... to accommodate a myriad of institutional needs ... chief among which is internal security.' Accordingly, the Department must enforce reasonable rules of internal prison management to ensure public safety and prison security. These rules must be modified as conditions change, different security needs arise, and experience brings to light weaknesses in current security measures. Where, as here, the measure has at most an incidental effect on the general public, it is reasonable to conclude that the Legislature did not intend the measure to be subjected to the 'normal public participation process.'

Id. at 669-70.

With respect to the instant action, the policy at issue merely changes the delegation of who may approve the release of inmates on the Restricted Release List to the general population. Such a policy is a matter of internal prison management. Moreover, the policy has, at most, an incidental effect on the general public. As such, the policy does not constitute a "regulation" for purposes of the Commonwealth Documents Law. Therefore, the defendants' motion to dismiss the plaintiff's complaint should be granted with respect to this claim, as well.

Turning then to the plaintiff's motion for judgment on the pleadings, the plaintiff simply argues that he has sufficiently alleged the personal involvement of each of the defendants so as to proceed with his claims pursuant to § 1983. (Doc. No. 19).

The defendants do not seek dismissal of the plaintiff's complaint on this basis, nor have they opposed the plaintiff's motion setting forth this argument. However, for the reasons set forth above, the plaintiff's complaint is subject to dismissal for other reasons. Therefore, the plaintiff's motion for judgment on the pleadings should be denied.

***16** Finally, with respect to the plaintiff's motions for temporary restraining orders, each of these motions, although slightly different, relate to the implementation of DC-ADM 803-1, Inmate Mail and Incoming Publications, a matter unrelated to the claims raised in the plaintiff's complaint. In order to prevail on a motion for injunctive relief, the plaintiff must establish a relationship between the injury claimed in the motion and the conduct giving rise to his complaint. *See e.g., Nicholson v. Murphy,* 2003 WL 22909876 (D.Conn.)(citing *Omega World Travel, Inc. v. Trans World Airlines,* 111 F.3d 14, 16 (4th Cir.1997)(reversing district court's granting of a motion for injunctive relief because the injury sought to be

prevented through the injunction was unrelated and contrary to the injury which gave rise to the complaint)). To the extent the plaintiff wishes to do so, he may file a separate complaint raising his challenges to DC-ADM 803-1. However, he may not use the instant action as a mechanism for seeking unrelated injunctive relief. Therefore, the plaintiff's motions for temporary restraining orders should be dismissed.

On the basis of the foregoing, IT IS RECOMMENDED THAT:

(1) the defendants' motion to dismiss the plaintiff's complaint, (Doc. No. 13), be GRANTED in part and DENIED in part, as set forth above;

(2) the plaintiff's motion for summary judgment, construed by the court as a motion for judgment on the pleadings, (Doc. No. 18), be DENIED; and

(3) the plaintiff's motions for temporary restraining orders, (Doc. Nos.28, 30, 32, 34), be DISMISSED.

Footnotes

1 We note that plaintiff's ultimate complaint is with where he is confined, however he chooses to phrase it.

2 Under DC-ADM 802, the prisoner's status is reviewed every 90 days by the Program Review Committee. This three-person panel includes the Deputy Superintendent, an corrections officer, and another program member. *See* DC-ADM 802(E). At these meetings, the PRC "interviews" the prisoner and then issues a report on its decision to release the inmate to the general population or keep him confined in administrative custody. *Id.* at (E)(5). The inmate receives a copy of this report. *Id.*

3 See DC-ADM 802, which provides in part:

> H. Release from AC Status
>
> 2. With the exception of an inmate on the Restricted Release List, the Facility Manager or the PRC may release an inmate from AC status to general population at any time.
>
> 4. Inmates identified on the Restricted Release List may not be released without the approval of the Secretary/designee.
>
> a. the PRC may make a recommendation to the Facility Manager if it is believed that an inmate on the Restricted Release List could be safely released to the general population.
>
> b. The Facility Manager must provide rationale for recommending the release of the inmate to the Regional Deputy Secretary.
>
> c. If the Regional Deputy Secretary disapproves the release of the inmate, the Facility Manager will be advised and the recommendation will not be forwarded to the Secretary/designee.
>
> d. If the Regional Deputy Secretary approves the release, he/she will forward the recommendation to the Secretary/designee.
>
> e. The Secretary/designee will make the final decision whether or not to release an inmate on the Restricted Release List to the general population.

1 The defendants' appendix consists of three documents of which the court may take judicial notice. The first, Exhibit 1, is DOC Policy Statement DC-ADM 802, Administrative Custody Procedures. The second, Exhibit 3, is a docket sheet from the Philadelphia Court of Common Pleas. Finally, Exhibit 4, is a docket sheet from the Montgomery County Court of Common Pleas.

The appendix also contains a decision by the Program Review Committee, ("PRC"), dated September 29, 2005, which is related to the subject matter of the plaintiff's complaint. Although this document was not attached to the plaintiff's complaint, he references hearings before the PRC in his complaint and has not challenged the authenticity of the document submitted by the defendants. Therefore, in considering this document, the court has not converted the defendants' motion to one for summary judgment.

2 Despite the plaintiff's characterization, at times, of his placement on the Restricted Release List as "punitive punishment," DC-ADM 802, Administrative Custody Procedures, provides that the "Restricted Release List" is "[a] list of inmates, identified by the Office of the Secretary, who are restricted from release from [*administrative custody*] status without the prior approval of the respective Regional Deputy Secretary." DC-ADM 802(IV)(K)(emphasis added). Therefore, there is no indication that the plaintiff's placement on the Restricted Release List altered his administrative custody status.

3 Initially, the plaintiff included general claims of First and Fourth Amendment violations, as well. However, within his complaint, the plaintiff only sets forth allegations with respect to violations of his Eighth and Fourteenth Amendment rights.

4 The court notes that this cannot be considered a continuing type of violation. A continuing violation is occasioned by continued unlawful acts, not continued ill effects from an original violation by an act committed in a period barred by the statute of limitations. *Sandutch v. Muroski*, 684 F.2d 252 (3d Cir.1982). Pennsylvania does not recognize separate limitations periods for distinct injuries; the cause of action, once it has accrued based upon any injury governs all injuries caused by the same harm. *See Ross v. Johns-Manville Corp.*, 766 F.2d 823, 827 (3d Cir.1985); *Cathcart v. Keene Indus. Insulation*, 324 Pa.Super. 123, 471 A.2d 493 (1984).

Here, the plaintiff alleges that his rights were violated and, as a result, injury was incurred, in 1984, when he was placed on the Restricted Release List and in administrative custody. The fact that the plaintiff was continued in administrative custody does not act to renew the statute of limitations, as any injury caused by that action arose out of the plaintiff's initial placement on the Restricted Release List and in administrative custody.

5 DC-ADM 802 provides, in relevant part:

VI. PROCEDURES

H. Release from AC Status

2. With the exception of an inmate on the Restricted Release List, the Facility Manager or the PRC may release an inmate from AC status to general population at any time.

4. Inmates identified on the Restricted Release List may not be released without the approval of the Secretary/designee.

a. the PRC may make a recommendation to the Facility Manager if it is believed that an inmate on the Restricted Release List could be safely released to the general population.

b. The Facility Manager must provide rationale for recommending the release of the inmate to the Regional Deputy Secretary.

c. If the Regional Deputy Secretary disapproves the release of the inmate, the Facility Manager will be advised and the recommendation will not be forwarded to the Secretary/designee.

d. If the Regional Deputy Secretary approves the release, he/she will forward the recommendation to the Secretary/designee.

e. The Secretary/designee will make the final decision whether or not to release an inmate on the Restricted Release List to general population.

6 The defendants' materials indicate that the plaintiff was in Holmesburg Prison because he had been convicted in 1971 of the murder of a Philadelphia police officer.

7 *See* 71 P.S. § 310-1.