UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ARMONI JOHNSON,	:	
	:	
Plaintiff	:	**No. 3:15-CV-1232**
	:	
v.	:	(Judge Nealon)
	:	
SERGEANT MICHAEL ROSKOSCI,	:	
	:	
Defendant	:	

MEMORANDUM

BACKGROUND

Armoni Johnson, an inmate confined in the State Correctional Institution, located in Dallas, Pennsylvania, ("SCI-Dallas"), filed the above-captioned civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). On September 2, 2016, Defendant's initial motion to dismiss was partially granted, and Plaintiff's complaint was permitted to proceed only on his First Amendment free exercise claim. (Doc. 31). Plaintiff was given leave to amend his First Amendment retaliation, Eighth Amendment harassment, and Fourteenth Amendment discrimination claims. (Docs. 28 and 29). On September 30, 2016, Plaintiff filed an amended complaint. (Doc. 32).

Presently before the Court is Defendant's motion to dismiss Plaintiff's amended complaint with an accompanying brief in support, both of which were filed on October 18, 2016. (Docs. 33 and 34). The motion remains unopposed

and is ripe for disposition.[1] For the reasons that follow, Defendant's motion to dismiss will be granted in part and denied in part.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) provides for the dismissal of complaints that fail to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). "When ruling on a motion to dismiss under Rule 12(b)(6), the court must 'accept as true all [factual] allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff.'" Altland v. Wetzel, 2015 U.S. Dist. LEXIS 124787, at *2 (M.D. Pa. 2015) (Conner, J.) (alterations in original) (quoting Kanter v. Barella, 489 F.3d 170, 177 (3d Cir. 2007)). "Although the court is generally limited in its review to the facts contained in the complaint, it 'may also consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case.'" Id. (quoting Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994)); citing In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997)).

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[1]It is acknowledged that while the motion to dismiss remains unopposed, the United States Court of Appeals for the Third Circuit decision rendered in Stackhouse v. Mazurkiewicz, 951 F.2d 29 (3d Cir. 1991) discourages dismissal based solely on an unopposed motion, especially in the face of a motion to dismiss and/ or motion for summary judgment. Thus, out of an abundance of caution, this Court will address the merits of this motion.

"Federal notice and pleading rules require the complaint to provide 'the defendant notice of what the . . . claim is and the grounds upon which it rests.'" Id. (quoting Phillips v. Cnty. of Allegheny, 515 F.3d 224, 232 (3d Cir. 2008)). "To test the sufficiency of the complaint in the face of a Rule 12(b)(6) motion, the court must conduct a three-step inquiry." Id. (citing Santiago v. Warminster Twp., 629 F.3d 121, 130-31 (3d Cir. 2010)). At the first step, "the court must '[t]ake note of the elements a plaintiff must plead to state a claim.'" Santiago, 629 F.3d at 130-31 (quoting Ashcroft v. Iqbal, 556 U.S. 662, 675 (2009)). At the second step, "the factual and legal elements of a claim should be separated; well-pleaded facts must be accepted as true, while mere legal conclusions may be disregarded." Altland, 2015 U.S. Dist. LEXIS 124787, at *2-3 (citing Santiago, 629 F.3d at 130-31; Fowler v. UPMC Shadyshide, 578 F.3d 203, 210-11 (3d Cir. 2009)). Then, "[o]nce the well-pleaded factual allegations have been isolated, the court must determine whether they are sufficient to show a 'plausible claim for relief.'" Id. at *3 (quoting Iqbal, 556 U.S. at 679; citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (requiring plaintiffs to allege facts sufficient to "raise a right to relief above the speculative level"). A complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(6) if it fails to allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. The non-

moving party must aver "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 663.

"However, even 'if a complaint is subject to Rule 12(b)(6) dismissal, a district court must permit a curative amendment unless such an amendment would be inequitable or futile.'" Payne v. Duncan, 2016 U.S. Dist. LEXIS 10969, at *3 (M.D. Pa. Jan. 29, 2016) (Mariani, J.) (quoting Phillips, 515 F.3d at 245). The United States Court of Appeals for the Third Circuit has stated that:

> even when plaintiff does not seek leave to amend his complaint after a defendant moves to dismiss it, unless the district court finds that amendment would be inequitable or futile, the court must inform the plaintiff that he or she has leave to amend the complaint within a set period of time.

Phillips, 515 F.3d at 245.

In addition, given that he was granted in forma pauperis status to pursue this suit, see (Doc. 7), the screening provisions of 28 U.S.C. § 1915(e) apply. The court's obligation to dismiss a complaint under the Prisoner Litigation Reform Act's ("PLRA") screening provisions for complaints that fail to state a claim is not excused even after a defendant has filed a motion to dismiss. See, e.g., Lopez v. Smith, 203 F.3d 1122, 1126 n.6 (9th Cir. 2000). Hence, if there is a ground for dismissal which was not relied upon by a defendant in a motion to dismiss, the

court may nonetheless sua sponte rest its dismissal upon such ground pursuant to the screening provisions of the PLRA. See Id.; Dare v. U.S., 2007 U.S. Dist. LEXIS 45040 (W.D. Pa. 2007), aff'd, 264 F. App'x 183 (3d Cir. 2008).

Finally, "[t]he obligation to liberally construe a pro se litigant's pleadings is well-established." Higgs v. Atty. Gen. of the U.S., 655 F.3d 333, 339 (3d Cir. 2011) (citing Estelle v. Gamble, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Capogrosso v. The Supreme Court of N.J., 588 F.3d 180, 184 n.1 (3d Cir. 2009)). Therefore, the allegations advanced by Plaintiff, a pro se litigant, will be liberally construed.

AMENDED COMPLAINT ALLEGATIONS

Plaintiff's amended complaint states the following in entirety:

> Citizen Plaintiff Armoni Masud Johnson hereby cures the claim of the violation of the 14th Amendment under the (FREE EXERCISE CLAUSE), by ascertaining that in this action, citizen plaintiff is treated different than others similarly situated in the facility of Luzern[e] County jail. This is to say that others whom practice the Christian faith or the Catholic or Jewish faith, or even others whom practice no religion at all freely move about in Luzern[e] County jail able to ware [sic] beads around their necks with crosses on them, metal and plastic necklaces and chains with different amulets on them. I'm pretty sure that cameras in Luzern[e] County jail will frequently bare [sic] witness to this ascertation. In this action the defendant Sergeant Michael Roskosci makes the statement that because religious tribal cultural beads in which he called Rosemary beads did not have crosses on them they were

> altered, and is the reason why he seized or confiscated them. Herein, Citizen Plaintiff Armoni Masud Johnson shows that he has been treated different than others in general in which others of different faiths or no religious practices at all is allowed in the Luzern[e] County facility to ware [sic] necklaces and chains with crosses on them or different amulets being similarly situated or exactly situated as citizen plaintiff Armoni Masud Johnson was on the day of the violation of the defendant in which this action is brought being amended under the 14th amended of the (FREE EXERCISE CLAUSE0 respectively. Citizen Plaintiff Armoni Masud Johnson sincerely is hurt by how defendant violated my religious rights and oppressed me causing pain and suffering every time I think about how I citizen plaintiff has been discriminated against by defendant Sergeant Michael Rosckosci. I hereby seek a additional 30 thousand dollars from the defendant for the pain and suffering he caused me in this matter at hand for his discrimination against me.
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> As to a violation of the 8th Amendment of the United State Constitution, (CAMPAIGN HARASSMENT) has gotten very deep in which citizen plaintiff does not wish to address.

(Doc. 32, p. 1).

DISCUSSION

I. FIRST AMENDMENT FREE EXERCISE CLAIM

Pursuant to 42 U.S.C. § 1983, a plaintiff must demonstrate that his or her federal constitutional or statutory rights were violated by a person acting under the color of state law. See Kost v. Kozakiewitz, 1 F.3d 176, 184 (3d Cir.1993). Plaintiff's amended complaint, as discussed herein, will be construed that

Plaintiff is alleging that he was deprived of his First Amendment free exercise of religion right by Defendant.

In the motion to dismiss, Defendant asserts that Plaintiff's First Amendment free exercise claim raised in the amended complaint should be dismissed because "[i]n his Amended Complaint, Plaintiff fails to allege a violation or deprivation of any right protected by the United States Constitution. Plaintiff provides no legal or factual basis to sustain either a First Amendment or a Fourth Amendment claim against Defendant. The allegations in Plaintiff's Complaint do not create a "plausible" claim for relief as required by F.R.C.P. 8(a) and the Supreme Court's decisions in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 556 U.S. 662 (2009)." More specifically, Defendant asserts that Plaintiff has failed to state a claim for relief for a violation of his First Amendment free exercise right because he has failed to satisfy the "reasonableness" test as he did not allege that the confiscation of his beads were not reasonably related to the prison's legitimate penological interests in maintaining security. Defendant maintains the following:

> Here, Plaintiff's "tribal beads" and necklace chain were "confiscated as part of a routine search of all inmates for contraband. The search was directed at maintaining safety and security of the prison. Moreover, as Plaintiff plainly admits, the Defendant informed Plaintiff that his beads and necklace

chain were confiscated because they were prohibited contraband.

Pertinent to the instant matter, Rule 13 of the [Department of Corrections, ("DOC")] Handbook states:

> Inmates are not allowed to possess contraband. (Contraband is any item not lawfully permitted to be kept upon commitment, any item not (lawfully) obtain through the prison or any item altered or changed from original condition or purpose). Rule 13, DOC Handbook, at p. 8.

A plain reading of Plaintiff's Amended Complaint reveals that, during the course of the alleged confiscation, Defendant was merely performing his duties and acting pursuant to Rule 13 of the DOC Handbook, which expressly prohibits inmates from possessing contraband in order to maintain institutional security. (See Doc. 32 Amended Complaint). Defendant is employed by LCCF as a prison Sergeant. He is tasked with, among other duties, ensuring institutional security throughout the prison by conducting random searches of all inmates and their respective prison cells for prohibited contraband. Additionally, it is Defendant's responsibility to confiscate all contraband, as defined by Rule 13 of the DOC Handbook, found in possession of prison inmates. As such, Plaintiff's [Amended] Complaint merely alleges that Defendant confiscated Plaintiff's prohibited contraband as he was required to do because such contraband creates a risk of harm to the inmates and prison staff and thus an inmate's possession of these items is harmful to institutional security. Further, at no times does the Plaintiff claim the beads were unaltered.

Accordingly, Plaintiff has failed to allege that the confiscation of his tribal beads and necklace chain, however harmful to his religious practices, was not reasonably related to the prison's legitimate [penological] interests. As Plaintiff cannot satisfy the "reasonableness" test articulated by the Supreme Court, his

> [Amended] Complaint should be dismissed for failure to state a valid claim for which relief may be granted.

(Doc. 34, p. 4-7).

"The Free Exercise Clause of the First Amendment provides that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." Sutton v. Rasheed, 323 F.3d 236, 250-51 (3d Cir. 2003) (quoting U.S. CONST. amend. I.). "Although prison walls 'do not form a barrier separating prison inmates from the protections of the Constitution,' inmates' First Amendment rights 'must in some respects be limited in order to accommodate the demands of prison administration and to serve valid penological objectives.'" Id. at 252 (quoting Fraise v. Terhune, 283 F.3d 506, 515 n.5 (3d Cir. 2002)). "The Supreme Court has established that regulations reasonably related to legitimate penological interests generally pass constitutional muster." Id. (citing Turner v. Safley, 482 U.S. 78, 84 (1987)); O'Lone v. Shabazz, 482 U.S. 342 (1987)).

In determining whether a regulation is reasonably related to legitimate penological interests a court must consider the following four (4) factors: 1) "whether the regulation bears a 'valid, rational connection' to a legitimate and neutral governmental objective;" 2) "whether prisoners have alternative ways of exercising the circumscribed right;" 3) "whether accommodating the right would

have a deleterious impact on other inmates, guards, and the allocation of prison resources generally;" and 4) "whether alternatives exist that 'fully accommodate[] the prisoner's rights at de minimis cost to valid penological interests.'" Turner, 482 U.S. at 89.

When analyzing the first Turner factor, which "requires consideration of whether the restrictions on the plaintiff's religious rights bear a valid and rational connection to a legitimate and neutral objective," courts "accord great deference to the judgment of prison officials, who are charged with the 'formidable task' of running a prison." Banks v. Beard, 2013 U.S. Dist. LEXIS 140629, at *26-27 (M.D. Pa. 2013) (Munley, J.) (citing Sutton, 323 F.3d at 253). This factor "is 'foremost' in the Court's analysis, in that a rational connection is a 'threshold requirement.'" Id. at *27 (citing Sutton, 323 F.3d at 253). As for the second Turner factor, the court must consider "whether the inmate has other means of practicing his religion generally, not whether he has other means of engaging in any particular practice." Id. (citing Sutton, 323 F.3d at 255). The third and fourth Turner factors "focus on the specific religious practice or expression at issue and the consequences of accommodating the inmate for guards, for other inmates, and for the allocation of prison resources." Id. (citing Sutton, 323 F.3d at 257).

Construed liberally, Plaintiff is alleging that he holds a sincere religious

belief in possessing and using the religious beads in question, and that he has been prevented from using his religious beads because they were confiscated by Defendant. (Doc. 1, p. 2); See (Doc. 1-1). As a result, an analysis of his free exercise claim under Turner is required.

However, "[b]ecause the Turner analysis is exceedingly fact-intensive, it does not lend itself to resolution on a motion to dismiss." Sharrieff v. Moore, 2013 U.S. Dist. LEXIS 150320, at *13 (M.D. Pa. 2013) (Munley, J.) (citing Ramirez v. Pugh, 379 F.3d 122, 128, 130 (3d Cir. 2004)); Wolf v. Ashcroft, 297 F.3d 305, 308 (3d Cir. 2002); See Lane v. Tavares, 2016 U.S. Dist. LEXIS 91052, at *29-30 (M.D. Pa. July 12, 2016) (Schwab, M.J.); Kreider v. Wetzel, 2016 U.S. Dist. LEXIS 79337, at *30, adopted by, 2016 U.S. Dist. LEXIS 88893 (M.D. Pa. July 8, 2016) (Caputo, J.); Quiero v. Muniz, 2015 U.S. Dist. LEXIS 176269, at *19, adopted by, 2016 U.S. Dist. LEXIS 18821 (M.D. Pa. Feb. 17, 2016) (Caputo, J.); Thompson v. Smeal, 54 F. Supp. 3d 339, 343 (M.D. Pa. 2014) (Nealon, J.); Holbrook v. Jellen, 2014 U.S. Dist. LEXIS 67078, at *28-30, adopted by, 2014 U.S. Dist. LEXIS 66432 (M.D. Pa. 2014) (Caputo, J.).

Consequently, Defendant's motion to dismiss Plaintiff's First Amendment free exercise claim raised in his Amended Complaint will again be denied, and, thus, that claim will be permitted to proceed as originally stated in this Court's

Order issued on September 2, 2016. See (Doc. 28, p. 14); (Doc. 29).

II. FIRST AMENDMENT RETALIATION CLAIM, EIGHTH AMENDMENT HARASSMENT CLAIM, AND FOURTEENTH AMENDMENT DISCRIMINATION CLAIM

By Order dated September 2, 2016, this Court gave Plaintiff leave to amend his original complaint regarding his First Amendment retaliation claim, Eighth Amendment harassment claim, and Fourteenth Amendment discrimination claim. (Doc. 29). However, in his amended complaint, Plaintiff has made no allegations or plead any facts stating a plausible claim for relief, and, thus, has failed to cure any defect(s) in his original complaint. See (Doc. 32). In this Court's Order dated September 2, 2016, it was made clear that the amended complaint should be complete in and of itself and without reference to any prior filings, that it must specifically state which constitutional right(s) Plaintiff alleged Defendant violated, and that it was to set forth a short and plain statement of the grounds upon which relief could be granted and the Court's jurisdiction depends. (Doc. 29, p. 2). Plaintiff has failed to comply with this Court's Order by failing to cure the defects with these claims as discussed in this Court's Memorandum and Order issued on September 2, 2016. See (Docs. 28 and 29). As such, because Plaintiff's amended complaint has failed to comply with this Court's Order, (Doc. 29), because it failed to state allege any facts regarding these claims, let alone allege a plausible

claim upon which relief could be granted, Defendant's motion to dismiss Plaintiff's First Amendment retaliation, Eighth Amendment harassment, and Fourteenth Amendment discrimination claims will be granted, and Plaintiff's First Amendment retaliation claim, Eighth Amendment harassment claim, and Fourteenth Amendment discrimination claim will be dismissed with prejudice.

A separate Order will be issued.

DATE: July 24, 2017

/s/ William J. Nealon
United States District Judge