THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

B.L.,	:	
	:	
Plaintiff,	:	
v.	:	**3:15-CV-1327**
	:	**(JUDGE MARIANI)**
MARIROSA LAMAS, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM OPINION

I. INTRODUCTION

Presently before the Court is Plaintiff's Motion for Reconsideration, (Doc. 64), which asks the Court to reconsider part of its Order of February 13, 2017, (Doc. 52), in which the Court dismissed Count II of Plaintiff's Complaint with prejudice. For the reasons discussed below, the Court will deny the Motion for Reconsideration.

II. PROCEDURAL HISTORY

B.L., the prisoner-plaintiff in this matter, filed a Complaint with the assistance of counsel on July 3, 2015. (Doc. 1). The Complaint alleges various causes of actions stemming from the alleged sexual abuse B.L. experienced at the hands of a prison guard. The only cause of action relevant to the present motion is found in Count II of Plaintiff's Complaint and is stylized as "Violation of Eighth Amendment by State Created Danger." (Doc. 1 at 49). Count II is against various prison officials who allegedly either put Plaintiff in

an environment in which he was raped, or failed to take action to prevent the rape from occurring. (Doc. 1 at ¶¶ 183-188).

On September 04, 2015, most of the Defendants jointly filed a Motion to Dismiss.[1] (Doc. 12). As relevant here, the Motion sought to dismiss Count II of Plaintiff's Complaint on the basis that Plaintiff failed to plead any affirmative action on the part of the Defendants as required for a state-created danger cause of action. (Doc. 13 at 5-6). On August 30, 2016, Magistrate Judge Carlson issued a Report and Recommendation ("R&R"), and recommended that this Court deny Defendants' Motion as it pertains to Count II of Plaintiff's Complaint. (Doc. 44 at 23-27).

Defendants objected to this recommendation and, in doing so, raised two arguments for the first time: (1) the heading of Count II was brought as an Eighth Amendment claim while the state-created danger doctrine falls under the Fourteenth Amendment; and (2) Count II should have been dismissed pursuant to the more-specific-provision rule. (Doc. 46 at 3-6). In response, Plaintiff argued that he could bring a state-created danger cause of action under the Eighth Amendment and that the more-specific-provision rule did not bar his claim. (Doc. 47 at 2-7).

In an Opinion addressing the objections to the R&R, this Court noted that Plaintiff provided no authority for his proposition that he could bring a state-created danger cause of

[1] Almost all of the Defendants in this case are jointly represented. The exceptions are the unnamed Defendants and Rebecca Amber Zong, the Defendant who Plaintiff alleges committed the sexual assaults. Those Defendants were not party to the Motion to Dismiss.

action under the Eighth Amendment and made clear that the state-created danger doctrine flows from the Fourteenth Amendment. (Doc. 51 at 4 n.2). Therefore, the Court construed Plaintiff's Complaint as bringing the state-created danger claim under the Fourteenth Amendment and found that the claim was barred by the more-specific-provision rule under *Betts v. New Castle Youth Development Center*, 621 F.3d 249, 259-61 (3d Cir. 2010). (Doc. 51 at 2-4). Accordingly, finding that there was no viable state-created danger cause of action available to Plaintiff, the Court dismissed Count II with prejudice.[2] (Doc. 52 at 1).

Plaintiff then filed the present Motion for Reconsideration, (Doc. 64), arguing that dismissing Count II with prejudice was a clear error of law, (Doc. 65).

III. STANDARD OF REVIEW

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Specifically, the motion is generally permitted only if (1) there is an intervening change in the controlling law; (2) new evidence becomes available that was not previously available at the time the Court issued its decision; or (3) to correct clear errors of law or fact or prevent manifest injustice. *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v.*

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[2] In several instances, Plaintiff states that this Court dismissed Count II *sua sponte*. (Doc. 65 at 2, 7-8). Plaintiff, apparently, misunderstands the meaning of the term, and, because a Court is limited in what it can do *sua sponte*, the misapplication of the word is not inconsequential. Black's Law Dictionary defines *sua sponte* as "[w]ithout prompting or suggestion; on its own motion." *Sue Sponte*, BLACK'S LAW DICTIONARY (10th ed. 2014). Here, Defendants moved to dismiss Count II, and then, in their Objections to the R&R, argued for the precise basis on which this Court ultimately dismissed Count II. Plaintiff also fully briefed the issue in his response to Defendants' Objections. Therefore, this Court in no way dismissed Count II of the Complaint *sua sponte*.

Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). Moreover, "motions for reconsideration should not be used to put forward arguments which the movant . . . could have made but neglected to make before judgment." *United States v. Jasin*, 292 F. Supp. 2d 670, 677 (E.D. Pa. 2003) (internal quotation marks and alterations omitted) (quoting *Reich v. Compton*, 834 F. Supp. 2d 753, 755 (E.D. Pa. 1993) *rev'd in part and aff'd in part on other grounds*, 57 F.3d 270 (3d Cir. 1995)). Nor should they "be used as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant." *Donegan v. Livingston*, 877 F. Supp. 2d 212, 226 (M.D. Pa. 2012) (quoting *Ogden v. Keystone Residence*, 226 F. Supp. 2d 588, 606 (M.D. Pa. 2002)).

IV. ANALYSIS

The only basis for reconsideration Plaintiff raises in his brief is that the Court committed a clear error of law by dismissing his state-created danger claim with prejudice. Although much of Plaintiff's brief betrays a basic lack of understanding what the Court did and did not do in its Order of February 13, 2017, one subsection raises arguments amenable to resolution on a Motion for Reconsideration. The Court will begin by addressing these arguments and then will provide an explanation of how Plaintiff may obtain some of the relief he seeks through an appropriate motion under the Federal Rules of Civil Procedure.

A. Reconsideration

Plaintiff first argues that this Court erred in its conclusion that a state-created danger cause of action cannot be brought under the Eighth Amendment. (Doc. 65 at 10). Despite arguing that this is a clear error of law, Plaintiff provides no citation to an authority that has permitted pleading a state-created danger cause of action under the Eighth Amendment. Indeed, the two cases Plaintiff cites that address the state-created danger doctrine recognize that a state-created danger violates substantive due process rights. *See Estate of Lagano v. Bergen Cty. Prosecutor's Office*, 769 F.3d 850, 859 (3d Cir. 2014) ("It has been clearly established in this Circuit for nearly two decades that a state-created danger violates due process"); *Kneipp v. Tedder*, 95 F.3d 1199, 1201 (3d Cir. 1996) ("We hold that, if proven, the facts alleged will sustain a prima facie case of a violation of Kneipp's Fourteenth Amendment substantive due process right . . . . In so holding, we adopt the 'state-created danger' theory as a viable mechanism for establishing a constitutional violation under 42 U.S.C. § 1983").

Thus, Plaintiff is unquestionably wrong when he states that "nothing bars pleading the violation of rights protected by another part of the Constitution under a theory of state-created danger." (Doc. 65 at 10). The state-created danger doctrine flows from the idea that a *liberty interest* in personal security or bodily integrity is violated when a state official's affirmative actions increase the risk of harm to an individual that the state official has a special relationship with and that individual is harmed as a result. *See Kneipp*, 95 F.3d at

1201. That liberty interest is protected by the guarantee in the Fourteenth Amendment that a state shall not "deprive any person of life, *liberty*, or property, without due process of law." U.S. CONST. amend. XIV § 1 (emphasis added). No such guarantee is found in the Eighth Amendment.

Accordingly, as this Court previously concluded in its Opinion, there is no cognizable claim for violation of the Eighth Amendment under a state-created danger theory of liability. While this alone was a basis to dismiss Count II of Plaintiff's Complaint with prejudice, in its prior Opinion this Court liberally construed the Complaint as bringing the state-created danger claim under the Fourteenth Amendment. Having so construed the claim, the Court then found that, under binding Third Circuit precedent, Plaintiff could not maintain a state-created danger claim that is, in essence, a challenge to the conditions of Plaintiff's confinement. (Doc. 51 at 2-4). Plaintiff also alleges this was an error.

First, Plaintiff cites to two adopted report and recommendations where a Fourteenth Amendment state-created-danger claim was allowed to proceed alongside of an Eighth Amendment Claim. *See Peet v. Beard*, 2011 WL 718723 (M.D. Pa. 2011), *report and recommendation adopted*, 2011 WL 720192 (M.D. Pa. 2011); *R.B. v. Hollibaugh*, 2017 WL 663735 (M.D. Pa. 2017), *report and recommendation adopted*, 2017 WL 661577 (M.D. Pa. 2017). Plaintiff's reliance on these cases is misplaced. *Peet* does not address the application of the more-specific-provision rule and *R.B.* simply finds that the issue was not fully briefed.

Next, Plaintiff argues that *Betts* is both confined to its facts—"where the activity alleged to be dangerous was found to be uncoerced, commonplace, and socially acceptable"—and that *Betts* "allows dismissal of a prisoner's state-created-danger claim only where a parallel Eighth Amendment claim has failed." (Doc. 65 at 13-14). These arguments lack merit for two reasons. First, Plaintiff already argued, and the Court already addressed, his arguments that *Betts* is not applicable to the facts of Plaintiff's case. Thus, Plaintiff's arguments are simply an attempt to improperly use a Motion for Reconsideration "as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant." *Donegan*, 877 F. Supp. 2d at 226 (quoting *Ogden*, 226 F. Supp. 2d at 606).

Second, *Betts* contains no such limitations. The Third Circuit did not limit the application of the more-specific-provision rule to the facts of the case, but instead broadly held that "Betts's claims concern his *conditions of confinement* and *an alleged failure by Defendants to ensure his safety*. Because these allegations fit squarely within the Eighth Amendment's prohibition on cruel and unusual punishment, we hold that the more-specific-provision rule forecloses Betts's substantive due process claims." *Betts*, 621 F.3d at 261 (emphasis added). Nor did the Third Circuit base its dismissal on the fact that it had already dismissed the Eighth Amendment claim. Specifically, the Third Circuit noted that

> [t]he District Court rejected both claims, reasoning: (1) because the deliberate indifference necessary for a violation of due process is the same as that for Eighth Amendment violations, Betts's failure to show deliberate indifference in the Eighth Amendment context doomed his substantive due process claim;

and (2) Betts failed to establish a state-created danger because the alleged behavior did not shock the conscience.

Id. at 259-60. Nevertheless, the Third Circuit chose not to affirm the district court on these grounds but instead adopted the more-specific-provision rule which "obviate[d] the need to address Betts's Fourteenth Amendment substantive due process claims." *Id.* at 261.

In sum, Plaintiff provides no meritorious basis for reconsidering this Court's Order of February 13, 2017.

B. Motion for Leave to Amend

The remainder of Plaintiff's brief fails to provide arguments amenable to resolution on a Motion for Reconsideration. The Court, however, will address them briefly because they evince a fundamental lack of understanding of Federal Rule of Civil Procedure 15. Namely, Plaintiff argues that he should be able to amend his Complaint to plead that the facts underlying Count II are cognizable under a different constitutional theory. (Doc. 65 at 6-9, 14-15). Plaintiff, of course, is free to seek leave from the Court to do so under Federal Rule of Civil Procedure 15(a)(2).

Federal Rule of Civil Procedure 15 provides that a party may amend their complaint once within twenty-one days of service. FED. R. CIV. P. 15(a)(1). After that time, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." FED. R. CIV. P. 15(a)(2). "The United States Court of Appeals for the Third Circuit has adopted a liberal approach to the amendment of pleadings in order to ensure that 'a particular claim will be decided on the

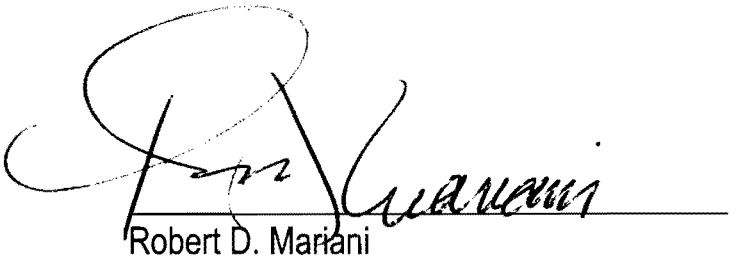
merits rather than on technicalities.'" *Payne v. Duncan*, 2016 WL 2859612, at *1 (M.D. Pa. 2016) (quoting *Dole v. Arco Chem. Co.*, 921 F.2d 484, 486-87 (3d Cir. 1990)). Indeed, the Third Circuit has noted that "[g]enerally, Rule 15 motions should be granted," *United States ex rel. Customs Fraud Investigations, LLC v. Victaulic Co.*, 839 F.3d 242, 249 (3d Cir. 2016), and that "the pleading philosophy of the Rules counsels in favor of liberally permitting amendments to a complaint" or pleading, *CMR D.N. Corp. v. City of Phila.*, 703 F.3d 612, 629 (3d Cir. 2013).

Here, Plaintiff seems to believe that the Court, in dismissing his state-created danger claim with prejudice, has somehow preemptively prevented Plaintiff from seeking leave to amend his pleadings pursuant to Rule 15 to add new causes of action asserting different theories of liability. Indeed, Plaintiff states that "[w]ith leave to amend, Count II could be revised so as to present its Eighth Amendment claims under a theory acceptable to the Court. In dismissing Court [sic] II *with prejudice*, the Court unjustly extinguishes claims that are not set forth under any other count of the Complaint." (Doc. 65 at 15) (emphasis original). Plaintiff, however, is mistaken about what the Court has done. This Court's Order dismissed Count II, a state-created danger cause of action, with prejudice. The dismissal was with prejudice because any attempt to amend *that particular cause of action* would have been futile since, for the reasons outlined above, there is no cognizable claim under a state-created danger theory available to Plaintiff. This, however, in no way prevents Plaintiff from seeking leave of the Court to take the facts pleaded in Count II and plead an entirely

new cause of action under a different and viable constitutional theory. The mechanism to do this, however, is not a Motion for Reconsideration, but a Motion for Leave to Amend a Complaint pursuant to Rule 15.

V. Conclusion

For the foregoing reasons, the Court will deny Plaintiff's Motion for Reconsideration, (Doc. 64). As explained above, however, if Plaintiff wishes to amend his Complaint to bring a new cause of action under a different constitutional theory, Plaintiff is free to seek leave to do so through a properly filed Motion for Leave to Amend. The Court, however, will not entertain a Motion for Leave to Amend styled as a Motion for Reconsideration. A separate Order follows.



Robert D. Mariani
United States District Judge