

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GABRIEL ROSA-DIAZ,)	
Plaintiff,)	
)	C.A. No. 1:17-cv-215
v.)	
)	
M. OVERMYER, et al,)	
)	
Defendants.)	

MEMORANDUM ORDER

This prisoner civil rights action was received by the Clerk of Court on August 10, 2017, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. The magistrate judge's report and recommendation, issued on July 20, 2018 recommended that Defendants' Motion to Dismiss [ECF No. 12] be granted in part and denied in part, as follows:

- Granted as to Plaintiff's failure to allege the personal involvement of Defendants Dickey, Moore, and Blich. These Defendants should be terminated from the docket;
- Denied as to Plaintiff's failure to allege the personal involvement of Defendant Lopez;
- Granted as to Plaintiff's failure to allege the personal involvement of Oberlander. Defendant Oberlander should be terminated from the docket;
- Denied as to Plaintiff's failure to allege the personal involvement of Overmyer;

- Granted as to Plaintiff's failure to allege the personal involvement of Norris and Smith. These Defendants should be terminated from the docket;
- Granted as to the retaliation claim arising out of Plaintiff's placement in the STGMU;
- Denied as to the retaliation claims arising out of the assault;
- Granted as to the Eighth Amendment claim against Defendant Hill. Defendant Hill should be terminated from the docket;
- Granted as to the conspiracy claim;
- Granted as to the claims against Overmyer in his official capacity;
- Denied as to qualified immunity; and
- Denied as to punitive damages.

Service was made on Plaintiff by mail at SCI Smithfield, where he is incarcerated, and on Defendants. No objections were filed. After de novo review of the petition and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 13th Day of August, 2018;

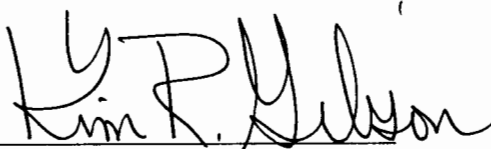
IT IS HEREBY ORDERED that that Defendants' Motion to Dismiss [ECF No. 12] is GRANTED in part and DENIED in part, as follows:

- Granted as to Plaintiff's failure to allege the personal involvement of Defendants Dickey, Moore, and Blich. These Defendants shall be terminated from the docket;
- Denied as to Plaintiff's failure to allege the personal involvement of Defendant Lopez;
- Granted as to Plaintiff's failure to allege the personal involvement of Oberlander. Defendant Oberlander shall be terminated from the docket;

- Denied as to Plaintiff's failure to allege the personal involvement of Overmyer;
- Granted as to Plaintiff's failure to allege the personal involvement of Norris and Smith. These Defendants shall be terminated from the docket;
- Granted as to the retaliation claim arising out of Plaintiff's placement in the STGMU;
- Denied as to the retaliation claims arising out of the assault;
- Granted as to the Eighth Amendment claim against Defendant Hill. Defendant Hill will be terminated from the docket;
- Granted as to the conspiracy claim;
- Granted as to the claims against Overmyer in his official capacity;
- Denied as to qualified immunity; and
- Denied as to punitive damages.

The report and recommendation of Magistrate Judge Baxter, issued July 20, 2018, is adopted as the opinion of the court.

August 13, 2018


KIM R. GIBSON
United States District Judge

cc: Susan Paradise Baxter
U.S. Magistrate Judge

all parties of record _____