

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

MARCUS WALTON,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 13-1109
)	
)	
CORRECTIONAL OFFICER)	
WALTON, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

On July 31, 2013, the Clerk of Courts for the United States District Court for the Western District of Pennsylvania received from Plaintiff Marcus Walton a Complaint; neither the filing fee nor a motion to proceed *in forma pauperis* was included with the Complaint. On August 1, 2013, Plaintiff filed a Motion to proceed *in forma pauperis*; the Motion was granted on September 20, 2013 and Plaintiff's Complaint was filed. The Complaint contains three (3) counts: (1) an Eighth Amendment violation for failure to protect (Count I); (2) an alleged violation of his procedural due process rights (Count II); and (3) an alleged tort of conversion/violation of his due process rights under the Fourteenth Amendment associated with two separate occurrences involving deprivation of his personal property (Count III).

On December 5, 2013, Defendants filed an Answer and Motion for Judgment on the Pleadings [ECF #32] . On March 25, 2014, Plaintiff filed several documents in opposition to the Motion for Judgment on the Pleadings. On August 14, 2014, Magistrate Judge Eddy filed an Order wherein she denied without prejudice to be refiled as a Motion for Summary Judgment that part of the Defendants' Motion for Judgment on the Pleadings wherein they argued that

Plaintiff had failed to exhaust his administrative remedies with respect to Counts I and II of the Complaint. On August 15, 2014, Magistrate Judge Eddy issued a Report and Recommendation (“R&R”) in which she recommended that the Defendants’ Motion for Judgment on the Pleadings be denied with respect to Count III of the Complaint. The first basis for her recommended denial was that it was premature to dismiss Plaintiff’s claim regarding the deprivation of his property during his transfer from MCF to SCI- Greene in May of 2011 based upon a statute of limitations argument. Magistrate Judge’s Report and Recommendation, p. 11. The second basis for her recommended denial was that with respect to Plaintiff’s claim regarding the deprivation of his property in January of 2013, Defendants argued that they are entitled to sovereign immunity with respect to this part of Plaintiff’s claim, and Plaintiff “appears to dispute whether the Defendants were acting within the scope of their duties” such that a material fact remains to be resolved.” Id. at p. 12. Finally, the magistrate judge reasoned that Defendants’ Motion had to be denied with respect to Count III of the Complaint because Defendants contended that Plaintiff had failed to state a claim upon which relief can be granted under the Fourteenth Amendment relative to the January 2013 confiscation of property because Plaintiff took advantage of the prison grievance procedure with respect to the property in question and therefore, the claim was barred as a matter of law, but that “a plaintiff may dispute whether the post-deprivation process is meaningful, . . . and thus, it would be inappropriate to dismiss this claim before giving Plaintiff an opportunity to do so under the circumstances.” Id. at p. 13.


Rule 72(b)(3) of the Federal Rules of Civil Procedure provides: “The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further

evidence; or return the matter to the magistrate judge with instructions.” *Id.* Objections to the R&R were due no later than August 29, 2014. To date, no objections have been filed.

We have reviewed *de novo* the pleadings in this case relevant to Count III of Plaintiff’s Complaint together with the August 15, 2014 Report and Recommendation from Magistrate Judge Eddy. Having done so, the following Order is entered:

AND NOW, this 2nd day of September, 2014, it is HEREBY ORDERED, ADJUDGED AND DECREED that the Magistrate Judge’s Report and Recommendation [ECF #53], dated August 15, 2014, is adopted as the Opinion of the Court.

It is further hereby ORDERED, ADJUDGED, and DECREED that the Defendants’ Motion for Judgment on the Pleadings [ECF#32] is DENIED with respect to Count III of Plaintiff’s Complaint.


Maurice B. Cohill, Jr.
Senior District Court Judge