

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

DUSTIN MOSER,)	
)	
Plaintiff,)	Civil Action No. 15-1516
)	
v.)	Judge Cathy Bissoon
)	Magistrate Judge Cynthia Reed Eddy
BYUNGHAK JIN, <i>et. al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

This case was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On February 7, 2018, the Magistrate Judge issued a Report (Doc. 134) recommending that both Superintendent Gilmore and Administrator Vihlidal’s motion for summary judgment (Doc. 109) and Dr. Jin’s motion for summary judgment (Doc. 116) be granted. Service of the Report and Recommendation was made, and no objections have been filed.

After a review of the pleadings and documents in the case, together with the Report and Recommendation, the following Order is entered:

The Motions for Summary Judgment filed by Superintendent Gilmore and Administrator Vihlidal (Doc. 109) and Dr. Jin (Doc. 116) are **GRANTED**. The Report and Recommendation of the Magistrate Judge, dated February 7, 2018, hereby is adopted as the Opinion of the District Court, with the following modification:

Plaintiff’s equal protection claim does not fail for the reason that he failed to exhaust his administrative remedies but, rather, because he did not put forth any evidence demonstrating that

Defendants' alleged failure to provide him with medical treatment amounts to a violation of the Fourteenth Amendment's Equal Protection clause. In his Complaint, Plaintiff attempts to assert an equal protection "class of one" discrimination claim. (See Doc. 1-1 at 10-11). In order to prove such a claim, Plaintiff must show that: (1) Defendants treated him differently than others similarly situated; (2) Defendants did so intentionally; and (3) there is no rational basis for a difference in treatment. See Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). Upon the Court's review of the evidence of record, the Court finds no evidence demonstrating that Defendants treated Plaintiff differently than other similarly-situated inmates, let alone that they did so intentionally. For this reason, the Court will grant summary judgment to Defendants as to Plaintiff's equal protection claim.

IT IS SO ORDERED.

March 7, 2018

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All counsel of record

cc (via First-Class U.S. Mail):

DUSTIN MOSER
GJ-3837
S.C.I. Greene
175 Progress Drive
Waynesburg, PA 15370