

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Antonio Pearson,	:	
Appellant	:	
	:	
v.	:	No. 1723 C.D. 2007
	:	SUBMITTED: July 11, 2008
Thomas Shawley, Supt. Gerald	:	
Rozum, Major Daniel Gelhmann,	:	
Hearing Ex. Eleanor Weaver,	:	
Allen Joseph, Dept. Supt. Steven	:	
Gates, Security Capt. Thomas Papuga,	:	
Chief Hearing Ex. Bitner, CFMS II	:	
Paul Fisher, John Doe (O.P.R.)	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: August 13, 2008

The Court of Common Pleas of Somerset County sustained preliminary objections filed by the Department of Corrections (Department) and dismissed Antonio Pearson’s complaint, in which he alleged misconduct on behalf of the prison officials in the disposition of his challenge to an unfavorable misconduct decision.

Pearson, an inmate at the State Correctional Institution at Somerset (SCI-Somerset), filed a civil complaint in which he alleged that Thomas Shawley, acting in his capacity as Corrections Food Service Sergeant, fabricated charges of

prison misconduct¹ on July 4, 2006, in retaliation for Pearson's threat to complain about him to his supervisors. Pearson asserted that Hearing Examiner Eleanor Weaver, during the misconduct hearing conducted under the Department's regulations, erroneously sustained the finding of misconduct, and that the remaining appellees failed to investigate the violation of his rights and covered up Shawley's unconstitutional actions. Pearson averred that as a result of the misconduct, he spent 20 days on cell restriction, lost privileges, and lost his job as a prison cook for six months.

Pearson sought monetary, declaratory, and injunctive relief in compensation for the alleged violations of his civil rights under 42 U.S.C. § 1983, and, more specifically, violation of his rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution.

The trial court sustained preliminary objections filed by the Department of Corrections on behalf of all appellees and dismissed the complaint, upon concluding that it lacked subject matter jurisdiction over matters regarding prison misconduct and denial of inmate grievances, that the complaint failed to state a viable civil rights claim, and that Pearson failed to exhaust his administrative remedies.

Our review of an order of a trial court sustaining preliminary objections in the nature of a demurrer is limited to determining whether the trial court committed an error of law. *Lockett v. Blaine*, 850 A.2d 811 (Pa. Cmwlth. 2004). As such, our review is plenary. The court must accept as true all well-

¹ Pearson was charged with using abusive language to an employee, refusing to obey an order, refusing to work, and lying to an employee in connection with an incident while Pearson was working in the prison kitchen.

pleaded allegations of material fact in the complaint as well as any inferences reasonably deduced therefrom, resolving any doubt in favor of overruling the demurrer. *Id.* The allegations of a *pro se* complainant are held to a less stringent standard than that applied to pleadings filed by attorneys, such that if the complainant has pleaded facts that may entitle him to relief, preliminary objections will be overruled. *Id.* On appeal, Pearson attributes error to all of the trial court's bases for sustaining the preliminary objections and dismissing his complaint.

Lack of Subject Matter Jurisdiction

Pearson argues that because his complaint requests money damages for a violation of his constitutional rights, the court of common pleas has subject matter jurisdiction. While we agree with Pearson's legal statement, it misconstrues the nature of appellees' preliminary objection.

As the trial court explained in its opinion, to the extent that Pearson's complaint attempted to state a claim based on the issuance of the misconduct and the handling of the administrative appeal process, the law is clear that a challenge to an unfavorable misconduct or grievance decision is not subject to judicial review unless the inmate can identify a personal or property right not limited by the Department of Corrections. *See Weaver v. Dep't of Corr.*, 829 A.2d 750 (Pa. Cmwlth. 2003); *Ricketts v. Cent. Office Review Comm.*, 557 A.2d 1180 (Pa. Cmwlth. 1989). The trial court properly concluded that it lacked jurisdiction to review the outcome of the misconduct decision.

Failure to Exhaust Administrative Remedies

Pearson argues that the trial court erred when it concluded that he failed to exhaust his administrative remedies. In his brief, he explains that he exhausted his administrative remedies with respect to the misconduct issued by appellee Shawley on July 4, 2006, and that his complaint makes absolutely no reference to a grievance procedure. Pearson misapprehends the basis for the trial court's disposition of the preliminary objection.

The Department of Corrections' preliminary objection averred that exhaustion of administrative remedies is a prerequisite to all actions brought under 42 U.S.C. § 1983 or for violation of federal law,² and that although Pearson initiated a grievance related to the alleged misconduct by appellees, he failed to pursue his claims to final review before filing his complaint in the court of common pleas. The Department of Corrections attached to its preliminary objections an affidavit signed by its chief hearing examiner and copies of the applicable grievance decisions. The record supports the trial court's decision on this issue.

Pearson does not challenge the legal conclusion that his § 1983 claim is barred by 42 U.S.C. § 1997e(a) because he failed to exhaust his administrative remedies, and the court does not address this issue.

² 42 U.S.C. § 1997e, Suits by prisoners, states in pertinent part: "(a) Applicability of administrative remedies. No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). *See Porter v. Nussle*, 534 U.S. 516 (2002).

Failure to State a Claim

The Relief section of Pearson's complaint requests a declaration that his rights under the First, Eighth, and Fourteenth Amendments have been violated. After a fair reading of the facts as pleaded, the trial court concluded that Pearson was raising a claim for retaliation. On appeal, Pearson does not challenge the trial court's characterization of his claim. Pearson argues only that the court erred in concluding that he failed to state a claim for retaliation.

In order to prevail on a retaliation claim, an inmate must establish the following elements: 1) he was engaged in constitutionally protected conduct; 2) he suffered adverse action at the hands of prison officials; and 3) the protected activity was a substantial motivating factor in the prison official's decision to take the adverse action. *Rausser v. Horn*, 241 F.3d 330 (3d Cir. 2001). Pearson alleges that he suffered adverse action, but he does not allege that he was engaged in constitutionally protected activity and thus fails to establish two of the three necessary elements. The trial court did not err in sustaining the demurrer.

Leave to Amend

Pearson argues that the trial court erred when it failed to grant him permission to file an amended complaint. We disagree. "Where the initial pleading reveals that the complaint's defects are so substantial that amendment is not likely to cure them, and that the *prima facie* elements of the claim or claims asserted will not be established, the right to amend is properly withheld." *Feingold v. Hill*, 521 A.2d 33, 39 (Pa. Super. 1987).

Accordingly, the order of the trial court is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

Senior Judge Kelley concurs in the result only.

