

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Frederick T. Ray, III, :  
Appellant :  
v. : No. 2188 C.D. 2007  
: Submitted: April 4, 2008  
D. Edward McFadden, Ron Phillips, :  
D. Scott Graham, Robert Wilson, :  
Walter Reed, Morgan Taylor, :  
Phillip Walker, E. Farina, O. Miller, :  
L. Bohn, J. Brooks, L. Wright, Sgt. :  
Griswold, Sgt. McMillan, Sgt. Holmes, :  
R. Cochlin, Cpl. Major, Cpl. Lawson, :  
Cpl. Yancik, Cpl. Boetlin, Sgt. Ruby, :  
Lt. Forbes, Sgt. Shivone, Cpl. English, :  
Mr. Rogevich, Mr. Mulrooney, M. :  
Mitchell, Co. DeForrest, Co. Jennings, :  
John Doe Duty Officers, John Doe :  
Investigating Officers, Cpt. Dougherty, :  
John Doe Cell Extra Unit, Prison :  
Board, Chester County Commissioners :  
and John Doe Mail Clerk :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE PELLEGRINI

FILED: May 16, 2008

Frederick T. Ray, III (Ray) appeals *pro se* from an order of the Court of Common Pleas of Chester County (trial court) granting the motion of certain employees of the Chester County Prison, Chester County Prison Board, and Chester

County Commissioners (collectively, “Prison Officials”) for judgment on the pleadings because the facts alleged in Ray’s complaint failed to establish liability on any party or to demonstrate any basis for relief.

Ray is currently an inmate at the State Correctional Institution in Forest, Pennsylvania. From approximately November, 2004 until June, 2005, Ray was confined as a pre-trial detainee at the Chester County Prison. On December 4, 2006, Ray filed a multi-count complaint<sup>1</sup> under 42 U.S.C. §1983<sup>2</sup> against 38 individuals employed at the Chester County Prison claiming that they used excessive force against him or allowed excessive force to be used against him; that his right of access

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<sup>1</sup> On December 21, 2006, Ray filed a document entitled “Plaintiff’s Amendment to Original Complaint under 42 U.S.C. §1983.” In its opinion, the trial court found that it was unlikely that Ray intended the amendment to, in fact, be a substitute for the original complaint. The trial court further stated that assuming Ray intended the amendment to be a supplement to the original complaint and that an appellate court would entertain this procedural irregularity, it considered and ruled on the complaint and amendment together as a single pleading, and Ray appealed therefrom.

<sup>2</sup> 42 U.S.C. §1983 provides, in pertinent part, as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

Section 1983 does not create substantive rights, but it provides a remedy for the violation of rights created under the federal constitution or under federal law. *Oklahoma City v. Tuttle*, 471 U.S. 808 (1985). In order to establish a prima facie case under Section 1983, a plaintiff must allege two things: (1) a person deprived the plaintiff of a federal right arising from federal law, and (2) such person acted under color of state law. *Gomez v. Toledo*, 446 U.S. 635 (1980); *Murtagh v. County of Berks*, 535 Pa. 50, 634 A.2d 179 (1993).

to the courts was violated; that he was retaliated against for exercising his right of access to the courts; and that his substantive and procedural due process rights were violated.

In the requested relief portion of his complaint, Ray demanded a declaratory judgment that the disciplinary procedures at the Chester County Prison were antiquated and unconstitutional as applied to pre-trial detainees and that such actions by Prison Officials constituted a policy and custom of violating his First and Fourteenth Amendment rights.<sup>3</sup> Ray also requested that Prison Officials be held jointly and severally liable for monetary, compensatory, nominal, exemplary, and punitive damages.

Prison Officials answered, denying that they retaliated against Ray by using excessive force because any force and restraint used was done so for legitimate security reasons caused by his violent proclivities. In addition, Prison Officials denied any allegation by Ray that he was not provided with notice of disciplinary hearings, an opportunity to cross-examine witnesses, or a written statement of the disciplinary hearing findings. Moreover, they denied that they deprived him access to

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<sup>3</sup> Ray also requested relief in the nature of an injunction ordering Prison Officials to: (1) investigate Chester County Prison's disciplinary procedures and the arbitrary use of restraints as punishment upon pre-trial detainees; (2) order Prison Officials to immediately promulgate written policy preventing the arbitrary use of restraints for discipline and punishment upon pre-trial detainees; (3) order the warden to provide proper training to all staff concerning prisoner rights and use of restraints, specifically upon pre-trial detainees; and (4) order Prison Officials to expunge all of his misconduct reports and any other official documents included in his commitment records to the Pennsylvania Department of Corrections (Department), which could adversely affect his parole eligibility.

the court by not forwarding court correspondence to him once he had been transferred from the Chester County Prison.

Prison Officials then filed a Motion for Judgment on the Pleadings on the basis that Ray's complaint failed to plead sufficient facts to substantiate any of the claims. The trial court granted Prison Officials' Motion for Judgment on the Pleadings<sup>4</sup> finding that Ray failed to establish the requisite liberty interest in order to succeed on a due process claim because his constitutional rights were reduced during his lawful incarceration. With respect to his retaliation claim, the trial court found that Ray's allegations were insufficient to support the claim. As to municipal liability, the trial court found that Ray failed to allege any custom, policy, or long-standing practice that would be sufficient to impose liability upon the government officials named in the case. Ray appealed arguing that he alleged sufficient facts to support his legal claims under Section 1983 which precluded a judgment on the pleadings.<sup>5</sup>

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<sup>4</sup> A motion for judgment on the pleadings should be granted only where the pleadings demonstrate that no genuine issue of fact exists and that the moving party is entitled to judgment as a matter of law. *Dunn v. Board of Property Assessment Appeals and Review*, 877 A.2d 504 (Pa. Cmwlth. 2005).

<sup>5</sup> In reviewing a trial court's decision to grant judgment on the pleadings, the appellate court's scope of review is plenary. *North Sewickley Township v. LaValle*, 786 A.2d 325 (Pa. Cmwlth. 2001). We must confine our consideration to the pleadings filed and any documents properly attached to them, accepting as true all well pled statements of fact and admissions. *Id.* We will sustain a trial court's grant of judgment on the pleadings only where the moving party's case is so clear and free from doubt that a trial would prove fruitless. *Id.*

## A.

In his complaint, Ray alleged that he was retaliated against after he filed numerous lawsuits and grievances against several Prison Officials because these actions were followed by falsified misconduct reports causing him to be assaulted, his property confiscated, and punished with segregated confinement. To state a claim for retaliation, a state prison inmate must show that he suffered some adverse action by prison officials in retaliation for engaging in constitutionally protected conduct. *Yount v. Department of Corrections*, 886 A.2d 1163 (Pa. Cmwlth. 2005). “An inmate may satisfy the requirement of ‘adverse action’ by demonstrating that the action taken by officials was sufficient to deter a person of ordinary firmness from exercising his constitutional rights.” *Id.* at 1167. The filing of civil rights complaints by a prisoner has been classified as a constitutionally protected activity when stating a claim for retaliation. *Allah v. Seiverling*, 229 F.3d 220 (3d Cir. 2000). *See also Smith v. Mensinger*, 293 F.3d 641 (3d Cir. 2002). Courts have also found that the placement of a prisoner in administrative segregation or disciplinary confinement would deter a reasonably firm prisoner from exercising his First Amendment rights. *Mitchell v. Horn*, 318 F.3d 523 (3d Cir. 2003). *See also Suppan v. Dadonna*, 203 F.3d 228 (3d Cir. 2002). However, a prison inmate also shoulders the substantial burden of proving that the alleged retaliatory actions would not have occurred “but for” the alleged protected activity. *Johnston v. Lehman*, 609 A.2d 880 (Pa. Cmwlth. 1992).

Ray contends that he met the causational element needed to make out his retaliation claims because it can be “plausibly inferred” that the actions of the Prison Officials were in response to his filing of lawsuits. However, for him to overcome the “but for” standard, we cannot simply infer from the circumstances that the Prison

Officials were acting in a retaliatory manner. For example, in Count I of his complaint, Ray alleged that after he informed one Prison Official that he was going to cross-examine him in an upcoming trial, he was cited for misconduct in the nature of disrespecting an officer. By stating these facts, Ray clearly does not establish that he would not have received the misconduct report “but for” his filing of lawsuits. Instead, multiple explanations could exist for the filing of the misconduct report, including the offensive nature of his comments and overall prison security.<sup>6</sup> Because Ray failed to establish causation, we affirm the trial court’s decision to grant the motion for judgment on the pleadings as to his retaliation claims.

## **B.**

In Counts I, II, III, and IV, Ray next alleges that he was a pre-trial detainee when he was restrained without due process which amounted to punishment. Simply put, what Ray is arguing is that any restraint placed on a pre-trial detainee violates that person’s due process rights. Prison Officials answered Ray’s allegations of due process violations by stating that all actions taken against Ray were for “security reasons,” and that the restraints used against him were only for a reasonable amount of time for legitimate security reasons due to his violent proclivities.

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<sup>6</sup> “Although prison walls do not separate inmates from their constitutional rights, because of the unique nature and requirements of the prison setting, imprisonment ‘carries with it the circumscription or loss of many significant rights ... to accommodate a myriad of institutional needs ... chief among which is internal security.’” *Payne v. Department of Corrections*, 582 Pa. 375, 399, 871 A.2d 795, 809 (2005), (quoting *Small v. Horn*, 554 Pa. 600, 611, 722 A.2d 664, 669-70 (1998)).

In *Bell v. Wolfish*, 441 U.S. 520 (1979), the Supreme Court found that when analyzing the conditions and restrictions of a pre-trial detainee's imprisonment, the question is whether those conditions amounted to punishment of the detainee because under the due process clause, a detainee could not be punished prior to an adjudication of guilt in accordance with due process of law.<sup>7</sup> The Court noted, however, "ensuring security and order at the institution is a permissible nonpunitive objective, whether the facility houses pre-trial detainees, convicted inmates, or both." *Id.* at 561. To determine whether restrictions and practices constitute punishment in the constitutional sense depends on "whether they are rationally related to a legitimate nonpunitive government purpose and whether they appear excessive in relation to that purpose." *Id.* The Court further explained the authority of the government to maintain security stating:

Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial. We need not here attempt to detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pre-trial detention. It is enough simply to recognize that in addition to ensuring the detainees' presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and

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<sup>7</sup> Because Ray is a pre-trial detainee, the alleged "excessive force" by Prison Officials will not be analyzed under the Eighth Amendment of the Constitution. Instead, Ray must rely on the Due Process Clause which requires that a pre-trial detainee not be punished. *Ingraham v. Wright*, 430 U.S. 651, 671-672, n. 40 (1977), ("Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.")

restrictions of pre-trial detention and dispel any inference that such restrictions are intended as punishment.

*Id.* at 540.

From the facts as pled in Ray's complaint, the Prison Officials' actions restraining Ray flowed from legitimate security and safety concerns. For example, in Count III Ray admits that he was cited for breaking a control block window and was subsequently subject to body restraints. In Count II, Ray also admits that he refused to cooperate by passively resisting entrance into his own cell and, as a result, he was forcibly placed within the cell. Ray has not pled any facts to establish that the restraint used by Prison Officials on him were of a punitive nature or excessive. Instead, the facts of his own complaint support the claim by Prison Officials that the restraints were used for security concerns stemming from his violent proclivities.

### C.

Ray next alleges in his complaint that his rights to procedural due process were violated due to the failure of Prison Officials to: 1) provide him with 24 hours notice before a hearing for misconduct was to take place; 2) the right to attend and cross-examine witnesses; and 3) the right to be provided a written statement explaining the reasons behind the determination. Ray asserts that he was harmed by these violations because as a result, he was placed in segregated or isolated confinement and lost days of "good time." Prison Officials answered these allegations by denying that Ray was not provided with notice of disciplinary hearings, an opportunity to cross-examine witnesses, or a written statement of the disciplinary hearing findings.



Even by treating all well pled facts by Ray as true, his claims of a denial of procedural process fail. Ray cannot allege a liberty interest in the context of a loss of “good time” because unlike the federal system, Pennsylvania does not recognize any “good time” that can be credited against a prisoner’s sentence. *Fordham v. Department of Corrections*, 943 A.2d 1043 (Pa. Cmwlth. 2008). Moreover, the placement of a prisoner in segregated confinement or the location of the prisoner in the institution does not trigger a liberty interest necessary to establish a due process violation because “[p]rison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply.” *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). Absent a liberty interest, the prisoner is not entitled to the minimum procedures required by due process of law. In *Sandin v. Conner*, 515 U.S. 472 (1995), the prisoner argued that his segregation in a special holding unit for disciplinary misconduct, which was expunged afterwards, violated his due process rights. The Supreme Court held that the prisoner’s discipline in segregated confinement “did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest” as it did not exceed other forms of segregated confinement and did not work a major disruption in the prisoner’s environment. *Id.* at 486. Because Ray’s disciplinary proceedings resulted in segregated confinement, he has not pled any liberty interest that would entitle him to procedural due process rights. Therefore, the trial court’s decision to grant the motion for judgment on the pleadings as to this claim is affirmed.<sup>8</sup>

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<sup>8</sup> To the extent that these claims implicate the conditions and restrictions of a pre-trial detainee, we find that Ray’s claims of the denial of procedural due process also fail under the analysis in *Bell*. Ray does specifically plead any facts to support a conclusion that the alleged deprivation of procedural due process was punitive in nature. Instead, in Count I of the complaint, **(Footnote continued on next page...)**

## D.

In Counts II, III, and IV, Ray alleges that Prison Officials, at multiple times and under variant circumstances, used excessive force upon his person.<sup>9</sup> Specifically, Ray references the physical and mechanical full-body restraints used against him as supporting his claim of excessive force. The general due process guarantees of the Fourteenth Amendment apply to pre-trial detainees. In *Fuentes v. Wagner*, 206 F.3d 335 (3d Cir. 2000), the Court of Appeals for the Third Circuit recognized that a pre-trial detainee has federally protected liberty interests different in kind from those of sentenced inmates, and the Due Process Clause protects him from the use of excessive force amounting to punishment. The pivotal inquiry in

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**(continued...)**

in each of the situations in which Ray alleges that he was denied procedural due process, he also admits that a hearing was conducted and that he appealed the findings of the disciplinary hearings.

<sup>9</sup> In Count II, Ray alleges that on February 14, 2005, Prison Officials attempted to put him into an isolation cell without a mattress and he refused to comply until a mattress was placed within the cell. Ray claims that the Prison Officials stated that no mattress would be given and forcibly put him into the cell. Ray claims that they threw a punch at him and in order to avoid a fabricated assault charge, he went “limp and passively resisted.” Ray alleges that a “Code 1” was then called in by one of the Prison Officials and he was dragged into the cell face-down. Ray next alleges in Count III that after he told one of the Prison Officials that he would sue him, another Prison Official aggressively pushed him up against the wall, maliciously kicked his legs open, and deliberately put handcuffs on incorrectly causing Ray to experience pain, bruising, and swelling. In Count III, Ray also refers to an incident where he was cited for breaking the block control room window and then a cell extraction team entered his cell and used body restraints on him. Ray alleges that while he was restrained he did not have the ability to defecate, sleep, urinate, or eat for 22 hours. In Count IV, Ray alleges that at 3:00 a.m. on February 22, 2005, five of the Prison Officials entered his cell and forced him to the floor on his stomach, bent his legs backwards, which aggravated his arthritic right knee and chronic back pain. Ray also alleged that the Prison Officials forcibly held him to the floor, searched his cell, and then left. Ray claims that on December 17, 2004, he was aggressively pushed up against the wall and had his legs kicked open and handcuffed. Upon arrival at his cell, Ray was then forced down to the floor while the cuffs were removed.

reviewing an inmate's Section 1983 claim for excessive force is “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Smith v. Mensinger*, 293 F.3d 641, 649 (3d Cir. 2000), citing *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). When excessive force is alleged in the context of a prison disturbance, the subjective inquiry is “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Id.* at 7. The objective inquiry is whether the inmate's injury was more than de minimis. *Id.* at 9-10.

After examining the merits of the excessive force allegations, Ray has failed to plead a cognizable claim. Ray claims that he was forced to the floor on a few occasions, which aggravated his chronic back pain and knee arthritis and that the handcuffs caused him pain, bruising, and swelling. Even if we assume that the injuries suffered by Ray were sufficiently serious to establish an Eighth Amendment violation, there is no evidence in the complaint that Prison Officials restrained him or used force against him “maliciously and sadistically to cause harm.” To the contrary, the facts pled by Ray in his Complaint support Prison Officials’ averments that Ray was a violent pre-trial detainee, who caused a significant amount of disruption necessitating the security and safety actions taken. Again, the trial court properly granted Prison Officials’ motion for judgment on the pleadings as to Ray’s excessive force claim.

#### **E.**

Ray claimed that his right of access to the courts was denied by Prison Officials by failing to forward a court notice that resulted in dismissal of his appeal of

a federal action. According to his complaint, after Ray was found guilty in the “Gagnon II hearing”<sup>10</sup> by a U.S. District Court on May 31, 2005, he was transferred to a state institution. However, the trial court opinion was mailed to the Chester County Prison, but was not forwarded to Ray at his new location. Ray alleges that because of the failure to forward his mail, which specifically included the briefing schedule for appeals, he was deprived of his post-trial motion rights to appeal the determination. Essentially, Ray claims that the lack of a prison policy mandating the forwarding of prison mail denied him access to the courts.

Prison Officials answered the allegations set forth in this count by first denying that Ray’s mail was not forwarded to him and stating that any mail addressed to prisoners who are no longer at the Chester County Prison and not forwarded to the prisoners is returned to the sender. When that happens, the Prison Officials’ claim is that it is a prisoner’s responsibility to communicate his new address to the sender. Prison Officials also claim that counsel represented Ray when his action was dismissed for failure to file a brief and either he or his counsel had almost a year to apprise the court of his new address.

Inmates have a “fundamental constitutional right of access to the courts.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977). To establish a Section 1983 claim for

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<sup>10</sup> A parole violator is generally entitled to two separate hearings prior to revocation of parole or probation. *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). *See also Goods v. Pennsylvania Bd. of Probation and Parole*, 590 Pa. 132, 150, 912 A.2d 226, 236 n. 11 (2006). The purpose of the first (*Gagnon I*) hearing is to “ensure against detention on allegations of violation that have no foundation of probable cause.” *Commonwealth v. Perry*, 385 A.2d 518, 520 (Pa. Super. 1978). The purpose of the second (*Gagnon II*) hearing is to determine whether facts exist to justify revocation of parole or probation. *Commonwealth v. Sims*, 770 A.2d 346 (Pa. Super. 2001).

denial of access to the courts, an inmate must demonstrate that he or she has actually been denied access to a court in a specific instance. *Johnston v. Lehman*, 609 A.2d 880 (Pa. Cmwlth. 1990). Based on the facts pled, we do not believe that Ray has made out a claim. Assuming that Ray's mail was not forwarded and Prison Officials have an obligation to do so, Ray was represented by counsel. Counsel would have received communications from the court regarding his criminal charges and would have filed a brief or perfected any appeal relative to Ray's case. Moreover, even assuming that he was unrepresented, Ray was not denied access to the courts merely if Prison Officials failed to forward the mail because it is always the litigant's responsibility to inform the court where court notices are to be sent. Because the burden falls upon the inmate or inmate's counsel to ensure that any legal documents arrive at the proper address of the inmate upon notice of release or transfer, Ray has failed to set forth a cause of action even if it is made out that Prison Officials failed to forward the court notice, which they deny.

#### **F.**

The final claim raised by Ray is the municipal liability of the Chester County Government. Ray contends that he has pled specific facts concerning the knowledge and acquiescence of Prison Officials, who are personally involved through "supervisor liability" and their capacity as "policy makers." Ray attempts to establish municipal liability by stating that Prison Officials had knowledge or should have had knowledge of or acquiesced in the constitutional violations that allegedly occurred at the Chester County Prison. Essentially, Ray avers that he established municipal liability of the Chester County Government because its Prison Officials have the ultimate responsibility for the conditions and policies of the prison.

In *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), the Supreme Court held that a local agency may be sued directly under Section 1983 for monetary damages where the alleged unconstitutional action is based on a deprivation of rights caused by a governmental custom, policy statement, ordinance, regulation or decision officially adopted and promulgated by the local agency's officers. However, the Court also determined that a municipality cannot be held liable because it employs a tortfeasor or, in other words, a municipality cannot be liable under Section 1983 on a master-servant theory. *Id.*, see also *Thomas v. City of Philadelphia*, 804 A.2d 97, 107 (Pa. Cmwlth. 2002). Because Ray has failed to make out any claim that would impose any liability at all on Prison Officials and did not establish the existence of any actual policy, custom, or decision adopted or promulgated by the Chester County Government or by Prison Officials that deprived him of any federal right, the trial court properly granted judgment on the pleadings as to this claim.

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DAN PELLEGRINI, JUDGE

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Board, Chester County Commissioners :  
and John Doe Mail Clerk :

**ORDER**

AND NOW, this 16<sup>th</sup> day of May, 2008, the order of the Court of  
Common Pleas of Chester County, dated May 25, 2007, is affirmed.

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DAN PELLEGRINI, JUDGE