

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean Pressley,	:
Appellant	:
	:
v.	:
	:
Department of Corrections, J. Beard,	:
J. Kerestes, K. Chmielewski,	:
R. Collins, B. Tritt, T. Derfler,	:
P. Ramer, G. Clements, M. Vuksta,	:
J. McKnight, J. Muick, B. Keller,	:
J. Unell, Eastern Regional	: No. 2344 C.D. 2008
Deputy Secretary Barry Johnson	: Submitted: August 7, 2009

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: September 16, 2009

Sean Pressley (Pressley) appeals from an order of the Court of Common Pleas of Schuylkill County (trial court) dismissing his complaint. Essentially, the issue before this Court is whether Pressley’s action is frivolous. For reasons that follow, we affirm the trial court.

Pressley, a prisoner, was transferred to the state correctional institution at Mahanoy on February 28, 2007. He was immediately placed in the restrictive housing unit (RHU) because he had outstanding disciplinary actions to serve. On October 18, 2007, Pressley had a review hearing wherein the review committee decided to release him into general population at the conclusion of his sanction period ending on October 24, 2007. Pressley was advised by the committee that his release

to general population was dependent upon the availability of a single cell. On October 24, 2007 Pressley was advised he was being placed on temporary administrative custody (AC) status because there were no single cells available. On October 25, 2007 Pressley had a hearing on his temporary status wherein it was determined he would remain on temporary AC status until a single cell became available.

When a single cell did not become available as of September 16, 2008, Pressley filed a writ of summons and a motion to proceed in forma pauperis. On October 6, 2008, the trial court granted Pressley leave to proceed in forma pauperis. On October 15, 2008, Pressley filed a motion for preliminary injunction, and a pro se complaint pursuant to the Civil Rights Act, 42 U.S.C. § 1983, alleging that the Department of Corrections, J. Beard, J. Kerestes, K. Chmielewski, R. Collins, B. Tritt, T. Derfler, P. Ramer, G. Clements, M. Vuksta, J. McKnight, J. Muick, B. Keller, J. Unell, and Eastern Regional Deputy Secretary Barry Johnson (collectively DOC) deprived him of procedural due process and equal protection of the law by denying his request to be moved from the restricted housing unit (RHU) to the general population of the prison. On October 20, 2008, the trial court dismissed Pressley's complaint with prejudice pursuant to Pennsylvania Rule of Civil Procedure (Pa.R.C.P.) No. 240(j) as a frivolous action; denied his motion for preliminary injunction; and vacated its order granting Pressley leave to proceed in forma

pauperis.<sup>1</sup> Pressley timely appealed the order pro se to this Court on November 6, 2008.<sup>2</sup>

Pressley argues that the trial court erred in finding that his complaint was frivolous. “A frivolous complaint is one lacking an arguable basis in either law or fact.” *Bennett v. Beard*, 919 A.2d 365, 366 (Pa. Cmwlth. 2007) (quotation marks omitted).

In his complaint, Pressley avers that he was denied due process and equal protection of the laws in violation of the 14th Amendment to the United States Constitution.<sup>3</sup> Specifically, Pressley alleges that he was denied his civil rights by the DOC when they committed him to AC custody and maintained him in AC custody. His complaint seeks damages and injunctive relief with respect to the day to day conditions of his confinement in AC.

“The Fourteenth Amendment prohibits any State from depriving a person of life, liberty, or property without due process of law.” *Meachum v. Fano*, 427 U.S. 215, 223 (1976).

The Due Process Clause by its own force forbids the State from convicting any person of crime and depriving him of his liberty without complying fully with the requirements of the Clause. But given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty to the extent that the State may confine him and subject him

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<sup>1</sup> This Court recognizes that Pa.R.C.P. No. 240(j) requires the complaint to be dismissed prior to the motion to proceed in forma pauperis being granted, however Pressley commenced his action with a writ of summons; hence, the trial court did not have an opportunity to review the complaint until after the motion was granted. Notwithstanding, this Court finds that any error that may have occurred is harmless.

<sup>2</sup> This Court’s review of a trial court’s dismissal of an action pursuant to Pa.R.C.P. No. 240(j) is limited to determining whether constitutional rights have been violated and whether an abuse of discretion or an error of law was committed. *Ocasio v. Prison Health Servs.*, \_\_\_ A.2d \_\_\_ (Pa. Super., No. 2002 WDA 2008, filed July 17, 2009).

<sup>3</sup> U.S. Const. amend. XIV.

to the rules of its prison system so long as the conditions of confinement do not otherwise violate the Constitution.

*Meachum*, 427 U.S. at 224.

States may in certain circumstances create liberty interests that are protected by the Due Process Clause. But these interests will generally be limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

*Sandin v. Conner*, 515 U.S. 472, 472 (1995). It is well established that “[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law,” and does not impose atypical and significant hardship on the inmate creating a liberty interest. *Id.* at 485.

Moreover, “administrative segregation is the sort of confinement that inmates should reasonably anticipate receiving at some point in their incarceration,” and, as such, does not trigger an interest protected by the due process clause. *Hewitt v. Helms*, 459 U.S. 460, 468 (1983).<sup>4</sup> Accordingly, Pressley does not have a liberty interest in being removed from AC and placed in the general population unit of the prison. Thus, his due process claim has no basis in law or fact and is therefore, frivolous.

Regarding his equal protection claim,

[i]n order to properly state an equal protection claim, a [prisoner] must allege that he is receiving different treatment from that received by other similarly situated individuals. A [prisoner] must show intentional discrimination because of the membership in a particular class, not merely that he was treated unfairly as an

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<sup>4</sup> Unrelated portions of the holding in *Hewitt* have been superseded by later case law; however, the portion of the holding in *Hewitt*, relevant to the present case has not been superseded.

individual. Assertions of intentional disparate treatment must be supported by specific factual allegations. Conclusory contentions of constitutional violations without factual support do not establish a constitutional deprivation sufficient to withstand a [dismissal].

*Myers v. Ridge*, 712 A.2d 791, 799 (Pa. Cmwlth. 1998) (citations omitted). In his complaint, Pressley has not alleged membership in a particular class, nor has he alleged the existence of a similarly situated prisoner being treated differently. Accordingly, he has not shown that he was treated differently as a result of intentional discrimination. Thus, his equal protection claim has no basis in law or fact, and is therefore, frivolous.

It should also be noted that Pressley claims a violation of Section 93.11 of the Pennsylvania Code, 37 Pa. Code § 93.11, in his brief. Section 93.11 provides:

- (a) An inmate does not have a right to be housed in a particular facility or in a particular area within a facility.
- (b) Confinement in a restricted housing unit (RHU), other than under procedures established for inmate discipline, will not be done for punitive purposes. The Department will maintain written procedures which describe the reasons for housing an inmate in the RHU and require due process in accordance and with established principles of law for an inmate who is housed in the RHU. Inmates confined in the RHU will be reviewed periodically by facility staff.

As averred by Pressley in his complaint, he is not being housed in the RHU for punitive reasons, he had review hearings on December 20 and 27, 2007, February 14, 2008, April 3, 2008, and May 18, 2008 and, he had over ten review hearings since May 18, 2008. Clearly, there is no violation of Section 93.11. Thus, this claim is also frivolous.

Essentially, Pressley has filed a civil rights action, and a motion for preliminary injunction, to effectuate a transfer within the prison. The trial court did

not commit an abuse of discretion or commit an error of law in dismissing said action. As this Court stated in *Iseley v. Beard*, 841 A.2d 168 (Pa. Cmwlth. 2004) (citing *Bronson v. Cent. Office Review Comm.*, 554 Pa. 317, 721 A.2d 357 (1998)):

[I]nternal prison operations are more properly left to the legislative and executive branches, and . . . prison officials must be allowed to exercise their judgment in the execution of policies necessary to preserve order and maintain security free from judicial interference. [Citation omitted.] We agree. Unlike the criminal trial and appeals process where a defendant is accorded the full spectrum of rights and protections guaranteed by the state and federal constitutions, and which is necessarily within the ambit of the judiciary, the procedures for pursuing inmate grievances and misconduct appeals are a matter of internal prison administration and the ‘full panoply of rights due a defendant in a criminal prosecution is not necessary in a prison disciplinary proceeding . . . .’

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Prison inmates do not enjoy the same level of constitutional protections afforded to non-incarcerated citizens. . . . ‘[I]ncarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.’ [Citation omitted.] Unless ‘an inmate can identify a personal or property interest . . . not limited by Department [of Corrections] regulations and which has been affected by a final decision of the department’ the decision is not an adjudication subject to the court’s review.

*Id.* at 172 (emphasis omitted).

For all of the above reasons, the order of the trial court is affirmed.

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JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 16<sup>th</sup> day of September, 2009, the October 20, 2008 order of the Court of Common Pleas of Schuylkill County is affirmed.

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JOHNNY J. BUTLER, Judge