

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alton D. Brown, :
Appellant :
v. : No. 959 C.D. 2007
Submitted: November 21, 2007
Jeffrey A. Beard, William Stickman, :
Louis S. Folino, Gregory J. Simatic, :
Lieutenant Kirby, Lieutenant Frank, :
Sergeant Michniak, C.O. Biagini, C.O. :
Cole, C.O. Basinger, Sergeant Gagnon, :
C.O. Santi, R. Workman, Mary S. :
Reese, Nurse Gress :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE FLAHERTY

FILED: February 26, 2008

Alton D. Brown (Appellant) appeals from an order of the Court of Common Pleas of Greene County (trial court) which denied Appellant's petition to proceed *in forma pauperis*, pursuant to Section 6602(e) and (f) of the Prison Litigation Reform Act (PLRA), 42 Pa. C.S. §6602(e) and (f).¹ We affirm.

¹ The PLRA provides in pertinent part as follows:

(e) Dismissal of litigation. – Notwithstanding any filing fee which has been paid, the court shall dismiss prison conditions litigation at any time, including prior to service on the defendant, if the court determines any of the following:

- (1) The allegation of indigency is untrue.
- (2) The prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted

(Footnote continued on next page...)

Appellant is an inmate formerly incarcerated on a temporary basis at the State Correctional Institution (SCI)-Greene. Appellee, Jeffrey A. Beard, Ph.D. is the Secretary of the Pennsylvania Department of Corrections (Department). The remaining Appellees are past and or present employees of the Department at SCI-Greene (Collectively, Prison Officials).

Initially, Appellant filed a petition for leave to proceed *in forma pauperis* along with a proposed complaint and request for preliminary injunction. Appellant alleged that on March 28, 2006, he was temporarily transferred to SCI-Greene to attend a civil trial in Greene County and that, while there, he was

(continued...)

or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude the relief.

The court may reinstate the prison conditions litigation where the dismissal is based upon an untrue allegation of indigency and the prisoner establishes to the satisfaction of the court that the untrue information was not known to the prisoner.

(f) Abusive litigation.- If the prisoner has previously filed prison conditions litigation and:

(1) three or more of these prior civil actions have been dismissed pursuant to subsection (e)(2); or

(2) the prisoner has previously filed prison conditions litigation against a person named as a defendant in the instant action or a person serving in the same official capacity as a named defendant and a court made a finding that the prior action was filed in bad faith or that the prisoner knowingly presented false evidence or testimony at a hearing or trial; the court may dismiss the action. The court shall not, however, dismiss a request for preliminary injunctive relief or a temporary restraining order which makes a credible allegation that the prisoner is in imminent danger of serious bodily injury.

42 Pa. C.S. §6602(e) and (f).

attacked by staff and placed in a cell without clothing, bedding or a mattress until April 3, 2006, when he was sent back to SCI-Graterford. Appellant further alleged that he was also denied food and medical care. In Appellant's complaint he alleged that he was in imminent danger of serious injury or death if he was ever returned to SCI-Greene. Appellant further sought an injunction to prevent his future housing at SCI-Greene and/or to enjoin staff there from assaulting or abusing him in the future.

On April 12, 2007, the trial court denied Appellant's petition for leave to proceed *in forma pauperis* based upon Section 6602(e) and (f) of the PLRA, 42 Pa. C.S. §6602(e) and (f). The trial court found that Appellant, who is currently incarcerated at SCI-Graterford, is in no physical danger that allegedly exists at SCI-Greene. The trial court further stated that "[i]f he believes that his upcoming PCRA hearing at Commonwealth vs. Brown, 281 Criminal Sessions, 2002, Greene County, will be conducted in any way that might jeopardize any rights he may have, he may file for relief at that number." Trial court opinion at 1. Appellant now appeals to our court.²

Appellant contends that the trial court abused its discretion in denying *in forma pauperis* status where Appellant alleged in his *pro se* complaint that he was in imminent and ongoing danger of serious bodily injury. Appellant does not contest that, prior to this action, he has had three other civil actions dismissed as frivolous or malicious or for failing to state a claim upon which relief could be

² Our review of the trial court's denial of an *in forma pauperis* application is limited to a determination of whether constitutional rights were violated, whether the trial court abused its discretion or whether it committed an error of law. Thomas v. Holtz, 707 A.2d 569 (Pa. Cmwlth. 1998).

granted.³ He does, however, contend that he fell within the imminent danger of serious bodily injury exception in the PLRA.

Section 6602(f)(2) of the PLRA states that the trial court shall not “dismiss a request for preliminary injunctive relief or a temporary restraining order which makes a **credible** allegation that the prisoner is in **imminent** danger of serious bodily injury.” 42 Pa. C.S. §6602(f)(2) (emphasis added).

In the present controversy, Appellant failed to make a credible allegation of imminent danger of serious bodily injury. See Pew v. Mechling, 929 A.2d 1214 (Pa. Cmwlth. 2007)(Pew failed to provide any credible allegations that he was in imminent danger of serious physical injury). Appellant was confined at SCI-Greene for seven days. Appellant alleges that during such time he suffered abuse by the staff and was placed in a cell without clothing, bedding or a mattress. Appellant also alleges that he may have to return to SCI-Greene for proceedings he may have in other lawsuits. Appellant, however, fails to state any specific date upon which he would be returned to SCI-Greene. Such speculation does not amount to anything “imminent.” Thus, the trial court was correct in determining that the imminent danger of serious bodily injury exception to the PLRA did not apply in this case.

Accordingly, we must affirm the decision of the trial court.

JIM FLAHERTY, Senior Judge

³ Such actions include, Brown v. Pennsylvania Department of Corrections, 591 Pa. 705, 918 A.2d 748 (2007); Brown v. James, 822 A.2d 128 (Pa. Cmwlth. 2002), appeal denied, 577 Pa. 736, 848 A.2d 930 (2004); and Brown v. Pennsylvania Department of Corrections, 911 A.2d 249 (Pa. Cmwlth. 2006), appeal denied, 592 Pa. 769, 923 A.2d 1175 (2007).

