IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Alfredo Prieto,	)	
Plaintiff,	)	
	)	
v.	)	**1:12cv1199 (LMB/IDD)**
	)	
Harold Clarke, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Alfredo Prieto, a Virginia inmate proceeding pro se, has filed a civil rights action, pursuant to 42 U.S.C. § 1983, alleging that the visitation policy at Sussex I State Prison constitutes cruel and unusual punishment, and that his confinement in a special housing unit violates his right to due process and constitutes cruel and unusual punishment. After reviewing plaintiff's complaint, the claim against defendants concerning the visitation policy must be dismissed pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim for which relief can be granted.[1] However, plaintiff has stated a claim that his due process rights have been violated by his indefinite placement in a special housing unit.

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[1] Section 1915A provides:

(a) **Screening.**—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for dismissal.**—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief can be granted; or
(2) seeks monetary relief from a defendant who is immune from such relief.

I. Background

Plaintiff is a death row inmate at Sussex I State Prison. Compl. 5. He alleges that the prison's policy permitting death row inmates to receive visitors from only immediate family members violates his constitutional rights and constitutes cruel and unusual punishment. Id. He also claims that his right to due process is being violated by his placement in "special housing confinement." Id. at unnumbered page 1. He claims that he has not received a disciplinary violation and is not a "valid security risk" and that keeping him in a six foot by sixteen foot "single cage" is cruel is unusual punishment. Id. Plaintiff attached to the complaint copies of several informal complaints and grievances that he filed at Sussex I. In response to an informal complaint he filed on July 24, 2012, a Sussex I employee wrote that plaintiff's "special housing confinement was determined by the judicial system." Att. 1 at 15, ECF No. 1-1.

II. Standard of Review

In reviewing a complaint pursuant to § 1915A, a court must dismiss a prisoner complaint that is frivolous, malicious, or fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915A(b)(1). Whether a complaint states a claim upon which relief can be granted is determined by "the familiar standard for a motion to dismiss under Fed. R. Civ. P. 12(b)(6)." Sumner v. Tucker, 9 F. Supp. 2d 641, 642 (E.D. Va. 1998). Thus, the alleged facts are presumed true, and the complaint should be dismissed only when "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). To survive a 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. ---, ---, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads

factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to meet this standard, id., and a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level . . .". Twombly, 550 U.S. at 55. Moreover, a court "is not bound to accept as true a legal conclusion couched as a factual allegation." Iqbal, 129 S. Ct. at 1949–50.

III. Analysis

To establish a claim for cruel and unusual punishment due to conditions of confinement that violate the Eighth Amendment, a plaintiff must allege facts sufficient to show (1) an objectively serious deprivation of a basic human need—that is, one causing serious physical or emotional injury—and (2) that prison officials were deliberately indifferent to that need. Farmer v. Brennan, 511 U.S. 825, 834 (1994); Wilson v. Seiter, 501 U.S. 294, 198 (1991). To meet the first prong, plaintiff must allege facts sufficient to show that the condition complained of was a "sufficiently serious" deprivation of a basic human need. Farmer, 511 U.S. at 834) (citing Wilson, 501 U.S. at 298). Only extreme deprivations will make out an Eighth Amendment claim, and it is plaintiff's burden to allege facts sufficient to show that the risk from the conditions of his confinement was so grave that it violated contemporary notions of decency and resulted in serious or significant physical or emotional injury. Hudson v. McMillian, 503 U.S. 1, 8 (1992); Strickler v. Waters, 989 F.2d 1375, 1379–81 (4th Cir. 1993). To meet the second prong, plaintiff must allege facts sufficient to show that defendants were deliberately indifferent, that is, that they knew of facts from which an inference could be drawn that a "substantial risk of serious harm," was posed to his health and safety, that they drew that inference, and then disregarded the risk posed. Farmer, 511 U.S. at 837.

Claims of cruel and unusual punishment that concern the deprivation of liberty interests must be reviewed according to the principles of Sandin v. Conner, 515 U.S. 472 (1995). Confinement does not strip inmates of all liberty interests, and the due process clause of the Fourteenth Amendment mandates procedural safeguards before an inmate can be punished by conditions so dramatically different from the basic range of constraints contemplated by his sentence. Id. at 483–84. However, such liberty interests "will generally be limited to the 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 by its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Id. at 484. On the other hand, the protections of the due process clause do not attach unless the plaintiff was deprived of such a liberty interest. Lekas v. Briley, 405 F.3d 602, 607 (7th Cir. 2005).

A. *Visitation*

Plaintiff's claim regarding his visitation rights fails to meet the first prong of the test for cruel and unusual punishment. The right to visitation privileges with extended family and friends is not a basic human need, and it is well established that a prisoner has no direct constitutional right to visitation. See, e.g., Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460–61 (1989) ("The denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence, therefore is not independently protected by the Due Process Clause."). Furthermore, courts that have analyzed inmates' entitlement to visitation under the Sandin principles also have concluded that there exists no liberty interest in visitation while incarcerated which is adequate to trigger the due process protections of the Fourteenth Amendment. See, e.g., Stevens v. Robles, 2008 WL

667407 at **6–7 (S.D. Cal. Mar. 7, 2008) (prisoners have no right to family visits, either independently protected by the Due Process Clause or as a liberty interest created by state laws or regulations), and cases cited. Therefore, plaintiff has failed to state a claim for which § 1983 relief can be granted.

B. *Housing Placement*

Plaintiff's claim regarding his housing placement also fails to meet the first prong of the test for cruel and unusual punishment. He does not assert that the decision about his housing placement affects a basic human need, and he does not claim to have any injury from being in the segregated housing unit. Alleging that the fact alone of his confinement to the segregated housing unit constitutes cruel and unusual punishment, without injury, is insufficient. See Sweet v. South Carolina Dep't. of Corrections, 529 F.2d 854, 861 (4th Cir. 1975) ("'[I]solation from companionship,' 'restriction on intellectual stimulation and prolonged inactivit' inescapable accompaniments of segregated confinement, will not render segregated confinement unconstitutional absent other illegitimate deprivations . . .").

However, plaintiff has sufficiently stated a claim that his placement in a special housing unit violates his due process rights. When a defendant is lawfully convicted and confined to jail, he loses a significant interest in his liberty for the period of that sentence. Gaston v. Taylor, 946 F.2d 340, 343 (4th Cir. 1991). Nonetheless, when applying the Sandin principles to plaintiff's claim, plaintiff's indefinite confinement in a restrictive housing unit amounts to an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life," and warrants constitutional protection. Sandin, 515 U.S. at 484. While a thirty-day placement in disciplinary segregation in Sandin did not implicate a liberty interest, the Supreme Court has held that an indefinite placement in highly restrictive conditions suffices to implicate such an interest.

Wilkinson v. Austin, 545 U.S. 209, 213, 224 (2005); see also Harden-Bey v. Rutter, 524 F.3d 789, 793 (6th Cir. 2008) (holding that the duration of restrictive segregation bears on whether a cognizable liberty interest exists). Because plaintiff alleges that he has been in a special housing unit for several years without the right to due process protections, he has stated a claim upon which relief could be granted.

IV. Motion to Proceed In Forma Pauperis

Plaintiff has applied to proceed in forma pauperis in this action; however, to determine whether plaintiff qualifies to proceed in forma pauperis, the Court directs plaintiff's correctional institution to provide additional information.

Accordingly, it is hereby

ORDERED that plaintiff's claim regarding Sussex I State Prison's visitation policy be and is DISMISSED WITH PREJUDICE for failure to state a claim, pursuant to 28 U.S.C. § 1915A(b)(1); and it is further

ORDERED that plaintiff's request to proceed in forma pauperis is conditionally granted to the extent that plaintiff need not prepay the filing fee at this time. Plaintiff is directed to sign and return the attached Consent Form within thirty (30) days from the date of this Order. If the Court grants plaintiff in forma pauperis status, he will be required to pay the filing fee in installments after first paying an initial filing fee; and it is further

ORDERED that the Clerk request plaintiff's institution to provide an Inmate Account Report Form on plaintiff within thirty (30) days of the date of this Order; and it is further

ORDERED that plaintiff's failure to comply with any part of this Order within THIRTY (30) DAYS FROM THE DATE OF THIS ORDER, or failure to notify this Court immediately in

the event he is transferred, released, or otherwise relocated, may result in the dismissal of this complaint pursuant to Fed. R. Civ. P. 41(b).

To appeal, plaintiff must file a written notice of appeal with the Clerk's Office within thirty (30) days of the date of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court.

The Clerk is directed to send a copy of this Order and a Consent Form to plaintiff, as well as a copy of this Order and the Inmate Account Report Form to plaintiff's current institution of confinement.

Entered this 2nd day of November 2012.

/s/
Leonie M. Brinkema
United States District Judge

Alexandria, Virginia