UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WILLIAM PETAWAY, Plaintiff, v. LINDA AUL, et al., Defendants.	)	C.A. No.: 11-665-M

MEMORANDUM AND ORDER

In his *pro se* Complaint, Plaintiff William Petaway, an inmate at the Rhode Island Adult Correctional Institute ("ACI") in Cranston, Rhode Island, seeks declaratory and injunctive relief and damages pursuant to 42 U.S.C. § 1983 and related statutes. Compl., ECF No. 1. The Complaint names seven defendants: Lynda Aul, an employee with the Special Investigations Unit ("SIU") at the ACI's High Security Center ("HSC"); Joseph Marocco, Associate Director of Health Care Services for the Rhode Island Department of Corrections ("RIDOC"); Lieutenant Galligan, Captain Headen and Deputy Warden Leach, all of whom are supervisory correctional officers at the ACI; Ashbel T. Wall, Director of RIDOC; and Officer Oliver, a corrections officer at the ACI. *Id.*

This Court has screened the Complaint pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A and finds that it does not state a claim upon which relief may be granted, for the reasons set forth below.[1]

[1] Mr. Petaway has also filed an application to proceed *in forma pauperis* ("IFP application"). (ECF No. 2.) In view of this Court's determination concerning the Complaint, Mr. Petaway's IFP application is denied as moot. *See infra.*

I. THE COMPLAINT

Mr. Petaway asserts two claims in his Complaint. He first alleges that he was mistakenly assessed a fee of six dollars for a visit to a prison eye doctor in October 2010 which he neither requested nor actually attended. Compl. ¶¶ 12-16. He alleges that upon his discovery of the error in November 2010, he wrote many letters to prison officials, including Defendants Galligan, Morocco and Wall, requesting a refund and that the responses he received from prison officials were unsatisfactory. *Id.* ¶¶ 17-27. He further alleges that Defendants' responses to his efforts to recover this money during the following months have caused him mental and emotional distress. *Id.* ¶ 27.[2]

In his second claim, Mr. Petaway alleges that he was disciplined in violation of RIDOC notice and hearing policies. *Id.* ¶ 34. On November 3, 2011, Defendant Oliver asked him if he wanted to see a doctor, to which he responded that he did not, and that he had not "signed up" to see one. *Id.* ¶¶ 28-33. Oliver then left without indicating that Defendant Aul had wanted to speak with him or that Mr. Petaway had violated any RIDOC policy. *Id.* ¶¶ 33-34.[3] On November 7, 2011 Mr. Petaway was "read a booking," i.e., notified of disciplinary charges Defendant Aul filed asserting that he had violated "some rule."[4] Mr. Petaway alleges that booking notice was late in violation of a RIDOC policy requiring notice of a booking to be given

---

[2] In an affidavit filed subsequent to the Complaint, Mr. Petaway informed the Court that he received a letter from Defendant Marocco dated January 4, 2012 that the six dollars would be returned to his inmate account. (Petaway Aff. ¶ 7, ECF No. 4.)

[3] In another section of his Complaint, Mr. Petaway explains that when an inmate is summoned, within earshot of other prisoners, to speak with someone in the SIU, the inmate is usually asked if he needs to see "a doctor," so that other prisoners who may overhear the request do not suspect the summoned inmate to be a "snitch." Compl. ¶ 42. Mr. Petaway alleges that when Defendant Oliver made the request to him, he was concerned about again being assessed a co-payment for an unrequested medical visit. *Id.* ¶ 31.

[4] Although Mr. Petaway refers to the "attached booking," no copy of the booking is attached to the Complaint, nor does he describe the exact violation with which he was charged. It appears, however, that the booking related to his refusal to accede to Defendant Oliver's request that Mr. Petaway see a doctor, which Mr. Petaway should have understood to be a request that he speak with Defendant Aul. *See* n. 3, *supra*.

to the inmate within 24 hours of the alleged violation. *Id.* ¶¶ 36-39, 43.[5] He further alleges that his disciplinary hearing was not held until November 17, 2011, in violation of (an unspecified) RIDOC policy requiring that such a hearing occur sooner, that his requested representative from RIDOC was not present at the hearing, and that he was found guilty of a violation without an adequate explanation, all in violation of an unspecified RIDOC policy. *Id.* ¶ 46-49. The result of this hearing was twenty-one days of disciplinary segregation, along with a twenty-one day loss of accumulated good time credits. *Id.* ¶ 48. Mr. Petaway further alleges that he appealed this disciplinary finding and penalty without success. *Id.* ¶¶ 50-51. Mr. Petaway claims that as a result of the deficient procedures, the disciplinary process and punishment was in violation of his constitutional rights.

Mr. Petaway seeks a declaration that the acts underlying his claims violated his constitutional rights, and requests an order from the Court directing RIDOC to give notice and disciplinary hearings in accordance with RIDOC policy, to restore his forfeited good time, and to award compensatory and punitive damages against each Defendant. *Id.* ¶ 52. He also seeks the "dismissal" of all of his disciplinary bookings in which notice of the booking was given more than 24 hours after the incident. *Id.*

II. DISCUSSION

A. Screening under § 1915(e)(2) and § 1915A

In connection with proceedings *in forma pauperis*, § 1915(e)(2) instructs the Court to dismiss a case at any time if the Court determines that the action, *inter alia,* "is frivolous or malicious" or otherwise "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B). Similarly, § 1915A directs courts to screen complaints filed by prisoners

[5] Mr. Petaway attaches part of the Code of Penal Discipline, Directive 9.5 and highlights ¶ 21, which discusses the 24 hour notice policy. (ECF No. 1-2.)

against a governmental entity, officer or employee and to dismiss the complaint, or any portion thereof, for reasons identical to those set forth in § 1915(e)(2). *See* 28 U.S.C. § 1915A(b).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B) and/or § 1915A is identical to the legal standard used when ruling on a Rule 12(b)(6) motion. *See Feeney v. Corr. Med. Servs., Inc.*, 464 F.3d 158, 161 n.3 (1st Cir. 2006). In making this determination, the Court must accept a plaintiff's allegations as true and construe them in the light most favorable to plaintiff. *Wilson v. Moulison N. Corp.*, 639 F.3d 1, 6 (1st Cir. 2011). Although the Court must review pleadings of a *pro se* plaintiff liberally, *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), the Court need not credit bald assertions or unverifiable conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50 (2009). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* at 1949 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); Fed. R. Civ. P. 8(a)(2).

B. Legal Claims Under 42 U.S.C. § 1983

Mr. Petaway's claims boil down to allegations that he suffered mental and emotional distress due to an unjustified six dollar charge to his inmate account, and that his due process rights were violated because he was disciplined for violating a RIDOC rule without proper notice or a hearing as required by RIDOC policy. In order to maintain a § 1983 action, a plaintiff must allege sufficient facts to meet "three elements for liability: deprivation of a right, a causal connection between the actor and the deprivation, and state action." *Sanchez v. Pereira-Castillo*, 590 F.3d 31, 41 (1st Cir. 2009) (citing 42 U.S.C. § 1983). Defendants' alleged conduct unquestionably qualifies as state action, and therefore the Court turns the focus of its discussion to Mr. Petaway's claims and consider whether those claims meet the other two elements of a § 1983 claim.

1. Emotional Distress/Reimbursement Claims

As an initial matter, the Court finds that Mr. Petaway's claim for reimbursement of the six dollars charged to his inmate account is moot in light of the correspondence from Defendant Marocco, indicating that his account would be credited that amount. (Petaway Aff. ¶ 7, ECF No. 4.) Thus, because it appears that the amount in question has been (or will be) returned to Mr. Petaway, this Court dismisses his claim for the return of six dollars as moot.

As to his emotional distress emanating from the erroneous six dollar charge, the Court finds that this claim is frivolous on its face. In order to prove a claim for intentional infliction of emotional distress, a plaintiff must show that "(1) the conduct [was] intentional or in reckless disregard of the probability of causing emotional distress, (2) the conduct must be extreme and outrageous, (3) there must be a causal connection between the wrongful conduct and the emotional distress, and (4) the emotional distress in question must be severe." *Swerdlick v. Koch*, 721 A.2d 849, 862 (R.I. 1998) (citing *Champlin v. Washington Trust Co. of Westerly*, 478 A.2d 985, 989 (R.I. 1984)). A plaintiff is also required to allege "at least some proof of medically established physical symptomatology for both intentional and negligent infliction of mental distress." *Id.* (citing *Vallinoto v. DiSandro*, 688 A.2d 830, 838–40 (R.I. 1997).

Mr. Petaway's claim for emotional distress, even when read liberally and drawing inferences in his favor, fail to allege any of the elements of that claim. Additionally, Mr. Petaway has not alleged any physical injury resulting from the alleged distress, further mandating dismissal. *See id.* Because his claim "lacks an arguable basis either in law or in fact," it is frivolous and should be dismissed. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Therefore, based on the foregoing, the Court dismisses Mr. Petaway's first claim relating to the reimbursement of inmate account funds and related emotional distress.

2. Disciplinary Proceeding

Mr. Petaway's next claim alleges that he was unjustly charged and disciplined for ignoring a directive to meet with Defendant Aul, without adequate notice, representation and findings, in violation of RIDOC's own policies, and that his punishment of twenty-one days in segregation and twenty-one days loss of good time was imposed in violation of his due process rights. Compl. ¶¶ 29-49. He complains that the notice was not given until four days after the incident and his hearing was held 14 days after the incident. *Id.* ¶¶ 36-45.

While prisoners do not shed all constitutional rights at the prison gate, "'[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.'" *Sandin v. Conner*, 515 U.S. 472, 485 (1995) (quoting *Price v. Johnston*, 334 U.S. 266, 285 (1948)). Moreover, "[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." *Id.* Due process liberty interests created by prison regulations should generally be limited to freedom from restraint that imposes "atypical and significant hardship on the inmate in relation to ordinary incidents of prison life." *Id.* at 484 (court deemed a prisoner's disciplinary segregation for thirty days to not be "an atypical and significant hardship" rising to the level of a due process violation).

Here, Mr. Petaway's disciplinary segregation for twenty-one days, imposed after notice to Mr. Petaway and hearing, similarly, does not constitute an atypical and significant hardship. The fact that the notice was delayed by four days and the hearing was held fourteen days after the incident does not change this result.[6] Rather, this Court concurs in the assessments of prison

---

[6] Mr. Petaway asserts that, as an inmate transferred from a Connecticut prison under the Interstate New England Interstate Corrections Compact (NEICC) codified at R.I. Gen. Laws § 13-11-1 *et seq*, he retains the rights of a Connecticut prisoner. He further alleges that, under Connecticut law, a previous disciplinary charge against him was dismissed because the booking was not served on him within 24 hours of his alleged misconduct; therefore a similar delay in service in Rhode Island should be governed by Connecticut law. (*See* Petaway Aff. ¶¶ 3-9; ECF No. 1-3.) First, Mr. Petaway has not provided any official records of that disciplinary

officials that such deficiencies constituted "minor discrepancies in meeting time frames" that, under RIDOC's Code of Inmate Discipline, were "technical mistakes" and "not cause for the reversal or dismissal of [his] Disciplinary Report." (*See* ECF No. 1-5 at 5.)

Moreover, the inclusion in the punishment of twenty-one days loss of good time similarly does not create a due process liberty right. Analyzing the plain language of R.I. Gen. Laws § 42-56-24, entitled "Earned time for good behavior or program participation or completion," the Court has held that good time credits do not confer a liberty interest upon prisoners that may not be taken away without full due process procedures, but are discretionary. *See Almeida v. Wall*, No. 08-184-S, 2008 WL 5377924 at **5-6 (D.R.I. Dec. 23, 2008) (Smith, J. adopting Report and Recommendation by Martin, J.).[7] Based on the language of the good time statute, the Court agrees that Mr. Petaway's loss of good time was not a protected due process right. As such, his claim fails in this regard.

Mr. Petaway argues that the disciplinary procedure of his "booking" and the late hearing on the booking violated the *Morris* Rules.[8] The *Morris* Rules are a set of rules that specify, among other things, procedures to be used by the Rhode Island correctional institutions with regard to inmate disciplinary actions. *See Morris v. Travisono*, 499 F.Supp. 149, 152 (D.R.I.

---

proceeding to allow the Court to consider the relevance of this allegation. Moreover, this does not change the fact that the three-day delay in receiving notice of the booking in issue here is simply not sufficient to trigger due process considerations under *Sandin*, where the alleged misconduct occurred at the ACI, a Rhode Island facility.

[7] In *Almeida*, the court noted that under R.I. Gen. Laws § 42-56-4, good time credit may be deducted from a prisoner's term(s) of sentence "with the consent of the director of the department of corrections ... upon recommendation to him or her by the assistant director of institutions/operations...." and that "statute also states in relevant part that the 'assistant director ... subject to the authority of the director, shall have the power to restore lost good conduct time in whole or in part upon a showing by the prisoner of subsequent good behavior and disposition to reform....' R.I. Gen. Laws § 42-56-24(d). Thus, it is discretionary and not mandatory that an inmate have his good time credit restored." 2008 WL 5377924 at *6.

[8] Although Mr. Petaway does not raise a violation of the "Morris Rules" claim in his Complaint, but in his memorandum filed on January 26, 2012, ECF No. 5, the Court will discuss it as such for the sake of completeness.

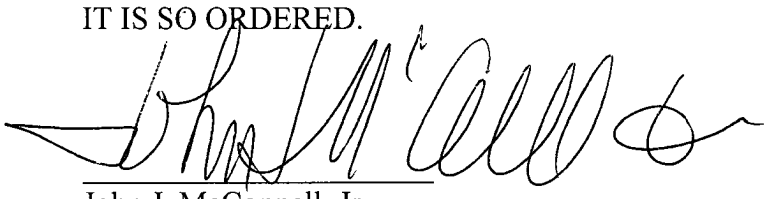
1980). The *Morris* Rules are state regulations, however, and this Court has held that "a plaintiff cannot bring a cause of action alleging violation of the *Morris* Rules in federal court without also alleging a federal constitutional or statutory violation." *Williams v. Wall*, No. 06-012-S, 2006 WL 2854296 at *4 (D.R.I. Oct. 4, 2006) (citing *Doctor v. Wall*, 143 F. Supp. 2d 203, 205 (D.R.I. 2001)); *See also Corners v. Saccoccia*, 43 F.3d 1456 at *1 (1st Cir. 1995)(Table) ("While the *Morris* Rules were designed to implement various constitutional protections, not every violation of those rules results in a claim of constitutional dimension.").

Mr. Petaway's allegations that he his discipline and punishment violated his due process rights fail to state a claim upon which relief may be granted. In short, because Mr. Petaway has failed to properly allege a federal due process or statutory violation, his claims under the *Morris* Rules must be dismissed.

III. CONCLUSION

In view of the foregoing considerations, this Court finds that Mr. Petaway's Complaint does not state a claim upon which relief can be granted as against any Defendant. Accordingly, the Complaint is DISMISSED. Mr. Petaway's IFP application is likewise dismissed as moot.

IT IS SO ORDERED.



John J. McConnell, Jr.
United States District Judge
Date: April 26, 2012