IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CHARLES M. ROBINSON,	:	
	:	
Plaintiff,	:	
	:	
	:	C.A. No. 05C-12-182
v.	:	
	:	
STAN TAYLOR, et al.,	:	
	:	
Defendants.	:	

Submitted: May 4, 2006
Decided: August 21, 2006

O R D E R

Upon consideration of the State's motion to dismiss Charles Robinson's (plaintiff's) complaint, plaintiff's response thereto and the record in this case, it appears that:

1. This action arises from an incident which occurred while the plaintiff was incarcerated at the Delaware Correctional Center in Smyrna, Delaware.

2. The facts of the incident are not in dispute. The plaintiff alleges in his complaint that on "November 2nd, 2004, [he] was found to be in possession of a 9 inch [sic] shank, which he claimed did not belong to him."[1]

3. The other factual allegations relate to conversations plaintiff had after he was isolated as a result of the incident and assertions that he did not have a fair hearing because he was unable to call all of the witnesses he desired.[2]

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[1] Compl., ¶11.

[2] 12. The Plaintiff advised a St.Lt.R.Taylor and Lt.Godwin, that he had been set up by another inmate, and asked permission to prove it.
13. The two officers told the Plaintiff that they did not believe him, at which time the Plaintiff tired to provide the two officers with names of inmates who saw the Plaintiff being set up by another inmate, only to be told " They Did Not Care. "

14. The Plaintiff was then taken to the hole, on the night of November 2nd, 2004, until his disciplinary hearing was held.

15. On or about the 4th day of November, the Plaintiff was visited by a Lt.Porter, in the hole, and advised that he would be going to the maxium security housing unit, when they found him guilty.

16. The Plaintiff asked Lt.Porter, where he would be going if he got found not guilty. Lt.Porter advised the Plaintiff that " He Would Never Get Found Not Guilty " because the Institution had to set an example out of me because of the previous incident with the counselor, (Cassie Arnold) being raped.

17. The Plaintiff advised Lt. Porter that he only had(2) weeks left on his court ordered program, so he could move on with his sentence. Lt.Porter advised the Plaintiff, " It Is Not In My Hands, The Decision To Have You Be Found Guilty Has Been Made By People Higher Than Me. "

18. On November 12th, 2004, The Plaintiff was transported from the hole to the maium security housing unit, without recieving a disciplinary hearing, or being found guilty of my write-up.

19. On or about the 17th day of November, 2004, the Plaintiff had his disciplinary hearing, with the hearing officer, a Lt. Larry Savage, in the maxium security housing unit.

20. When Lt.Savage showed the Plaintiff his write-up, the Plaintiff advised the Lt. that some of his witnesses were missing.

21. The Plaintiff advised Lt.Savage that the witnesses that were missing were also needed to prove his claim, only to be told by Lt.Savage that, " It Is Not My Problem, and that It Is Too Late To Add Them Now. "

22. The Plaintiff told Lt.Savage that when he was placed in the hole on November 2nd, 2004, he advised a Lt.Welcome that he needed a total of (4) inmate witnesses and (2) correctional officers as witnesses.

23. Lt.Savage advised the Plaintiff that " He Was Beat,and that I Could Not Call Institutional officers as witnesses, no matter what they were going to testify to on my behalf.

24. The Plaintiff explained his side of the incident to Lt.Savage at which time he advised me that because of " Lack of Evidence " to support my claim he was finding me " Guilty. "

25. The Plaintiff advised Lt.Savage that the evidence to support his claim relied on the Institutional officers, and inmate witnesses, at which time Lt.Savage told the Plaintiff, " He Could Not Help That. "

26. Lt.Savage started to give the Plaintiff the guilty form to sign when the Plaintiff advised him that he wanted to appeal his decision, only to be told that, " It Would Do Me No Good, Cause They Would Find Me Guilty Also, No Matter What I Put Down. "

27. The Plaintiff filled out the appeal forms and placed it in the In-House mail box, on the same night as he recieved them.

28. A couple months later, the Plaintiff saw Lt.Savage and asked him if he recieved his appeal forms and submitted them. Lt.Savage advised the Plaintiff that " He Did Receive Them, and He Had Submitted Them To The Commissioners Officer For Consideration. "

29. Over a 71/2 month period of time, the Plaintiff wrote the Disciplinary Department, Classification Department, Wardens Office, Deputy Wardens Officer, Bureau Chiefs Office, and the Commissioners Officer " Several Times " in order to find out the status of my appeal, only to never receive a response, anytime I wrote anyone.

30. My family contacted the Bureau Chiefs Office, Commissioners Office, and Wardens Office,(via letters, and phone calls), in order to find out the statute on the Plaintiffs appeal, only to be told that " They Had Recieved The Plaintiffs Appeal But Had Yet To Make A Decision, Because They Were Trying To Sort Out All The Facts. "

31. On or about the beggining of July of 2005, the Plaintiff was moved for classification reasons from the maxium security housing unit, to the medium high security housing unit.Upon being moved, the Plaintiff ran into Lt.Porter, and asked him about the status of his appeal. Lt.Porter asked him to write him a letter and he would check on it.

32. Upon the Plaintiff writing Lt.Porter the letter he requested, about a week later the Plaintiff recieved a response from a Counselor Todd Kramer, responding to the letter that the Plaintiff wrote to Lt.Porter. At which time, Counselor Todd Kramer advised the Plaintiff that " His Appeal Was Never Recieved On Time, So It Was Not Processed. " Which is the direct oppisite from what the Plaintiff was told by Lt.Savage, and what his family was told by the Commissioners Office.

Compl., ¶ 12-32. Excerpts from the Complaint appear in their original form, with no edits.

4. The State has attached to its motion, affidavits responding to the factual allegations in the complaint. Accordingly, the motion to dismiss will be treated as a summary judgment motion pursuant to Superior Court Civil Rule 56.

5. This Motion for Summary Judgment requires that all factual issues be viewed in a light most favorable to the plaintiff. The issue here is whether, accepting as true all the allegations made by the plaintiff, he has stated a claim for relief.

6. One fact is not at issue, that plaintiff was found in possession of a shank, a clearly prohibited item.

7. The first issue to be addressed is whether the plaintiff has alleged a violation of a protected liberty interest. The punishment experienced by plaintiff was a transfer to a different housing situation, apparently isolation, for ten days pending the outcome of a disciplinary hearing. He did not experience a loss of good time credits.[3]

8. State created liberty interests protected by the Due Process Clause are generally limited to restraints that impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life."[4]

9. The Third Circuit has ruled that administrative segregation of fifteen months was not sufficiently atypical or significant to rise to the level of a due process violation.[5]

10. There is no question that the period of confinement was within the sentence imposed upon him.[6] Consequently, defendant has not identified a liberty interest which has been violated.[7]

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[3] See Def. Mot. to Dismiss, Ex. C, D, F.
[4] *Griffin v. Vaughn*, 112 F.3d 703, 706 (3d Cir.1997)(quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)).
[5] *Griffin*, 112 F.3d at 706-08.
[6] *Munir v. Kearney, et al*., 2005 WL 1075287 * 4 (D.Del.)(citing *Hewitt v. Helms*, 459 U.S. 460 (1983)).
[7] ll Del. C. § 6529(e).

11. This court will take judicial notice of the fact that the allegations in this complaint arise from the same underlying incident which was the subject of more than one action in the Justice of the Peace Court.[8] That conclusion is based on the fact that the Complaint in the Justice of the Peace Court recites: "On November 2nd, 2004, the plaintiff was found to be in possession of a 9 inch shank."[9]

12. The Justice of the Peace action focused on the return of personal property, rather than claims of constitutional violations. However, both actions arose from the same event, consequently, all claims must be presented in a single action.[10]

13. The defendant's action in this Court is legally frivolous. Even a *pro se* litigant, acting with due diligence, should have found well settled law disposing of the claim, in that a related claim has previously been considered by a court of this State and dismissed. Sanctions were imposed for repetitive filing in the Justice of the Peace Court.

14. The Department of Corrections is directed to forfeit the portion of the litigant's behavior good time credits accumulated from December 21, 2005, up to and including every month until this order issues.[11]

Wherefore, the defendants' motion for summary judgment is GRANTED for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED.

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Judge Susan C. Del Pesco

[8] *Robinson v. St. Lt. R. Taylor and Lt. Godwin*, Del. J.P., C.A. No. J0601006809, Stallmann, J. (Feb. 23, 2006).
[9] Compl., ¶ 1, *Robinson v. St. Lt. R. Taylor and Lt. Godwin*, Del. J.P., C.A. No. J0601006809, Stallmann, J. (Feb. 23, 2006).
[10] *Ginocchio v. Black*, 1975 WL 168710; see also *Webster v. State Farm*, 348 A.2d 329 (Del. Super. 1975).

xc: Prothonotary
Lisa Barchi, Esquire
Charles M. Robinson

[11] 10 Del. C. § 8805.