

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

David R. Proverb

v.

Civil No. 08-cv-431-PB

James O'Mara, Superintendent,
Hillsborough County Department
of Corrections, et al.¹

REPORT AND RECOMMENDATION

Before the Court is David Proverb's complaint (document nos. 1, 6, 7 & 11)², filed pursuant to 42 U.S.C. § 1983, alleging that

¹In addition to O'Mara, Proverb names the following employees of the Hillsborough County Department of Corrections as defendants to this action: Capt. William Scurry, Sgt. J. Duclose, Capt. Mark Cusson, Capt. Bonnie Ives, Capt. Gilfford Hisco, Lt. Riley (first name unknown ("FNU")), Sgt. FNU Pinciario, Bill Raymond, Christine (last name unknown ("LNU")), FNU Barber, Dr. FNU Harris, Sgt. FNU Gordon, Corrections Officer ("C.O.") FNU Adams, C.O. FNU Lucas, C.O. FNU Revis, C.O. FNU Rosado, C.O. FNU Archenbault, C.O. FNU Ellis, C.O. FNU Marinowski, C.O. FNU Rodriguez, C.O. FNU Moloney, Jan LNU, Field Training Officer ("FTO") FNU Antillis, FTO FNU Granville, Sgt. FNU Barnes, Sgt. FNU Potter, C.O. FNU Rodgers, C.O. FNU Gosslin, C.O. FNU Thomas, C.O. FNU Sloane, C.O. FNU Utzilano, Sgt. FNU Brown, C.O. FNU Bowers, C.O. FNU Goldmann, C.O. FNU Bass, and several John Doe C.O.s.

²Proverb initially filed a complaint (document no. 1) on October 20, 2008. He filed attachments to that complaint on October 30, 2008. On January 9, 2009, Proverb filed two motions to amend his complaint (document nos. 6 & 7) and an addendum to his complaint (document no. 11). I grant the motions to amend

the defendants have violated his rights under the United States Constitution during his incarceration at the Hillsborough County Department of Corrections ("HCDOC"). The matter is before me for preliminary review to determine, among other things, whether the complaint states any claim upon which relief might be granted. See 28 U.S.C. § 1915A(a); United States District Court District of New Hampshire Local Rule ("LR") 4.3(d)(2).

Proverb has also filed several motions for discovery, seeking recordings of phone calls made from the HCDOC, HCDOC surveillance videos, and investigative documents and reports in the possession of the HCDOC or the Manchester, New Hampshire Police Department (document nos. 8-10). Because I find that these motions are premature, they are denied without prejudice to being renewed during discovery in this case, if necessary.

Standard of Review

Under this Court's local rules, when an incarcerated plaintiff commences an action pro se and in forma pauperis, the magistrate judge is directed to conduct a preliminary review. LR 4.3(d)(2). In conducting the preliminary review, the Court construes pro se pleadings liberally, however inartfully pleaded.

and will consider all of the documents, in the aggregate, to constitute the complaint in this action.

See Erickson v. Pardus, 551 U.S. 89, ___, 127 S. Ct. 2197, 2200 (2007) (following Estelle v. Gamble, 429 U.S. 97, 106 (1976) and Haines v. Kerner, 404 U.S. 519, 520-21 (1972) to construe pro se pleadings liberally in favor of the pro se party). "The policy behind affording pro se plaintiffs liberal interpretation is that if they present sufficient facts, the court may intuit the correct cause of action, even if it was imperfectly pled." See Castro v. United States, 540 U.S. 375, 381 (2003) (noting that courts may construe pro se pleadings so as to avoid inappropriately stringent rules and unnecessary dismissals of claims); Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997). All of the factual assertions made by a pro se plaintiff and inferences reasonably drawn therefrom must be accepted as true. See id. This review ensures that pro se pleadings are given fair and meaningful consideration.

Background

Facts Regarding Conditions of Confinement

David Proverb is a pretrial detainee who has been incarcerated at the HCDOC since January of 2007. Proverb has, at least since February of 2007, consistently been classified as a protective custody ("P.C.") inmate, meaning that he is separated

from the general population of inmates and housed with other P.C. inmates for his own safety.³

Proverb alleges that he was housed, with another inmate, in an eight foot by twelve foot cell for twenty-two hours a day, seven days a week. Also in this space was a double bunk, a desk, shelving, and a toilet/sink unit. Proverb claims that the size of the cell cannot adequately accommodate two inmates.

Further, Proverb states that at one point his cell had a broken cold water valve stem. As a result, for eight days, water constantly streamed from the sink onto his cell floor, during which the broken valve stem was not fixed, despite the officers on the unit claiming they had submitted a repair request to fix it. Proverb claims to have suffered severe sleep deprivation from the noise of the streaming water, causing depression and nausea. After eight days, Proverb was moved to a different cell, after he had sent a letter complaining about the condition of his cell to HCDOC Superintendent James O'Mara.

Proverb further complains that he was subjected to sleep deprivation while housed in Unit 1C because the lights and

³Although Proverb does not directly state why he was classified as a P.C. inmate, it appears that it was because his charges involve the sexual assault of a minor, a fact which, if known to other inmates, places him at risk of harm.

television stayed on in the dayroom until 4:00 a.m.

Additionally, doors were slammed at all hours, and the volume on the officers' radios was kept all the way up throughout the night. As a result, Proverb complains he received only one to two hours of sleep per night, and another three to four hours during the day. Although Proverb complained to C.O.s Rodgers, Gosslin, Thomas, Sloane, Utzilino, Sgt. Barnes, Sgt. Brown, O'Mara, and others, the HCDOC officials were not responsive to his concerns.

Proverb states that while he was housed on a multi-classification unit, the P.C. inmates on that unit were locked down twenty-two hours a day, as the officers had to accommodate out-of-cell time for a number of different classifications of inmates who could not share out-of-cell time with the P.C. inmates for the safety of the P.C. inmates. Due to excessive lockdown time, Proverb asserts broadly that P.C. inmates on the unit were denied reasonable access to telephone calls, educational programs, recreation, exercise, religious services, hygiene, medical care, mental health treatment, and visitors by Bill Raymond, Capt. Bonnie Ives, O'Mara, Capt. William Scurry, Capt. Mark Cusson, and Capt. Gilfford Hisco. Proverb asserts

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