

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MAURICE EMILE,	)	
	)	Civil Action No. 04 - 974
Plaintiff,	)	
	)	Judge Gary L. Lancaster /
v.	)	Magistrate Judge Lisa Pupo Lenihan
	)	
S.C.I. PITTSBURGH, and PA DEPT OF	)	Doc. No. 34
CORRECTIONS,	)	
	)	
Defendants.	)	

**Order**

The above captioned case involves an allegation of failure to protect in violation of the Eighth Amendment to the United States Constitution. On December 23, 2005 Defendants filed a Motion to Dismiss Plaintiff's complaint, alleging, *inter alia*, that he has failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act.

Plaintiff now files a third motion requesting discovery in this case as well as what appears to be a request to amend his complaint. The Court first notes that the document filed by Plaintiff is extremely difficult to read.

Relative to the requests for discovery, as stated in the Court's Order of January 31, 2006, all discovery in this matter is stayed until the pending Motion to Dismiss is decided. The basis for the motion being failure to exhaust, all of Plaintiff's allegations in the pending motion for discovery are irrelevant to whether the motion will be granted. In other words, Plaintiff is not asking for any discovery that will aid him in arguing the failure to exhaust claim.

Secondly, Plaintiff requests a reconsideration of his request for a "Spears Hearing,"

nothing in the law relative to this has changed since the Court's March 27, 2006 Order on this request.

Finally, in Plaintiff's title for his Motion he states "at least please add this to my amendment." As stated above, none of the allegations made in the motion respond to the failure to exhaust issue, therefore, amending Plaintiff's Complaint at this time will not affect the Motion to Dismiss. Should Plaintiff survive the Motion to Dismiss, the court will grant him leave to file an Amended Complaint upon request. Therefore,

**IT IS HEREBY ORDERED**, this 5th day of April, 2006, that Plaintiff's Motion filed at Document Number 143 on the docket is **DENIED**.

**IT IS FURTHER ORDERED** that in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(A), and Local Rule 72.1.3, the parties are allowed ten (10) days from the date of service to file an appeal from this order to the District Court. Failure to timely file an appeal may constitute a waiver of any appellate rights.

  
LISA PUPO LENIHAN  
U.S. Magistrate Judge

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