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6-5-2002

**Ellis v. Horn**

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 01-1697

JAMES ELLIS,

Appellant

v.

MARTIN HORN, Secretary of Corrections; JOHN M. MCCULLOUGH,  
Superintendent, SCI Houtzdale; DAVID CLOSE, D & A Treatment  
Supervisor, SCI Houtzdale

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

(Dist. Court No. 00-cv-00178J)  
District Court Judge: Honorable Donald E. Ziegler

Submitted Under Third Circuit LAR 34.1(a)  
May 10, 2002

Before: ALITO, COWEN, and LOURIE, Circuit Judges.

(Opinion Filed: June 4, 2002)

OPINION OF THE COURT

PER CURIAM:

Because we write for the parties only, we will not set out the background of this case. We reject the plaintiff's argument that the mootness doctrine does not apply to his claim for equitable relief. We further reject the plaintiff's argument that his injury qualifies him for money or punitive damages. Though on other grounds, we affirm the District Court's dismissal of this case.

First, Article III of the United States Constitution prohibits this Court from deciding moot questions because moot cases do not meet the case and controversy requirement. See U.S. Const. Art. III, 2, cl.1. Exceptions to the mootness doctrine

require a reasonable likelihood that the challenged action will impact the plaintiff; conjecture is not enough. See *Abdul-Akbar v. Watson*, 4 F.3d 195, 206 (3d Cir. 1993). Nothing in the record suggests that the plaintiff will be subject to the challenged action again. Therefore, we affirm the District Court's decision to dismiss his claim for equitable relief.

Second, the plaintiff must show he sued the defendants in their individual capacities and that he suffered physical injury. To begin, an individual state official, sued for damages in his official capacity, is not a person within the meaning of 42 U.S.C.

1983, see *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989), while a state official, sued for damages in his individual capacity, is. Here, reading the complaint generously, see *West v. Keve*, 571 F.2d 158, 163 (3d Cir. 1978), we believe that it asserts claims against the defendants in their individual, as well as official capacities. Although the complaint names two defendants in their official capacities, that the plaintiff seeks punitive damages, which cannot be recovered from the defendants in their official capacities, suggests that the plaintiff sued each official in his individual capacity as well. See *Gregory v. Chehi*, 843 F.2d 111, 120 (3d Cir. 1988).

Still, the plaintiff must meet the requirements of the Prison Litigation Reform Act, 42 U.S.C. 1997e(e), which provides: "No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." We see no construction of *Ellis's* complaint that would save his claims for compensatory damages from the bar imposed by 1997e(e). See *Allah v. Al-Hafeez*, 226 F.3d 247, 250 (3d Cir. 2000). Therefore, we affirm the dismissal of the plaintiff's claims for money damages against the defendants.

Because the plaintiff's claim for equitable relief is moot and because his claims for money damages require an element he cannot prove, we affirm the District Court's dismissal of this case.