BPS-269 **UNREPORTED - NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 02-2818

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THE PARA-PROFESSIONAL LAW CLINIC AT SCI GRATERFORD;
H. WILLIAMS, AF-2935; WALTER DOBSON, AF-4135; D. GREENE, AF-5712
M. TWIGGS, AF-6967; C. DIGGS, AK-7945; R. WILLIAMS, AM-1008;
C. BOYD, AM-9051; C. JOHNSON, AP-2785; W. FINNIGAN, AS-0826;
A. PHILLIPS, AS-1767; K. MINES, AY-5941; J. PACE, AY-6445;
R. WALKER, AY-8060; R. ORTIZ, BL-0305; C. BASSETT, BV-2576;
J. ANDERSON, BW-7671; T. HENDERSON, CP-0814; W. DURHAM, DB-6750;
T. MOTT, DE-1624; J. FIGUEROA, DZ-5832; ZEBBIE CLIFTON, AF-5043;
BEBLEY WELLS, AM-0253,

v.

JEFFREY A. BEARD, SECRETARY OF CORRECTIONS OF THE COMMONWEALTH
OF PENNSYLVANIA; DONALD T. VAUGHN, SUPERINTENDENT OF THE STATE
CORRECTIONAL INSTITUTION AT GRATERFORD (SCI-GRATERFORD);
MANUEL A. ARROYO, DEPUTY SUPERINTENDENT FOR CENTRALIZED SERVICES
AT SCI-GRATERFORD

Zebbie Clifton,

Appellant

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On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 78-cv-00538)
District Judge: Honorable Berle M. Schiller

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Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B) or Summary Action
Under Third Circuit LAR 27.4 and I.O.P. 10.6
July 17, 2003

Before: BARRY, AMBRO and ALDISERT, Circuit Judges.

(Filed: July 29, 2003)

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OPINION

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PER CURIAM

Pro se appellant Zebbie Clifton appeals the District Court's order granting appellees' motion to terminate a permanent injunction requiring the Para-Professional Law Clinic at Graterford to remain open. A panel of this Court recently affirmed the District Court's order in a counseled appeal. Para-Professional Law Clinic vs. Beard, No. 02-2788, 2003 WL 21500225 (3d Cir. July 1, 2003).

Clifton argues that the District Court lacked jurisdiction because the appellees' motion to terminate was not filed within two years of the enactment of the PLRA. However, 18 U.S.C. § 3626(b)(1)(A)(iii), provides that the prospective relief is terminable "in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment." (emphasis added). Clifton argues that the motion to terminate in ICU v. Ridge, 169 F.3d 178 (3d Cir. 1999), was filed within two years of the PLRA. However, the motion to terminate in ICU was based on 18 U.S.C. § 3626(b)(2), while the motion at issue in the instant appeal was based on § 3626(b)(1)(A)(iii). Clifton next argues that claims concerning access to the courts are not "civil actions with respect to prison conditions" as defined by 18 U.S.C. § 3626(g)(2).

This argument is also without merit. See Booth v. Churner, 206 F.3d 289, 294 (3d Cir. 2000).

Clifton also asserts that the termination provision is unconstitutional because it shifts the burden of proof to the appellants. Clifton cites 28 U.S.C. § 2072, as support for his contention that Congress cannot legislate the burden of proof. However, that statute has to do with the Supreme Court's authority to prescribe rules of evidence and procedure. Clifton does not explain how the Constitution is violated by the termination provision. In ICU v. Ridge, 169 F.3d 178 (3d Cir. 1999), we held that a termination provision of the PLRA, similar in relevant aspects to the provision at issue here, does not impermissibly mandate the reopening of final judgments, prescribe a rule of decision, or violate the separation of powers doctrine. We further held that the provision did not violate the inmates' rights to equal protection. The termination provisions allow for prospective relief if there is a current and ongoing violation of a federal right.

Clifton also argues that there is a current and ongoing violation of inmates' access to the courts. He apparently does not join in the other plaintiffs' concession that there is no ongoing and current violation. See Para-Professional Law Clinic, 2003 WL 21500225 at *1 ("The plaintiffs . . . concede that the rights of inmates at Graterford are not currently being violated."). However, he has pointed to no evidence in the record to support his argument or to show that the District Court's finding of no current and ongoing violation was incorrect. He only asserts that the appellees' policy per se is an ongoing violation.

Summary action is appropriate if there is no substantial question presented in the

appeal. See Third Circuit LAR 27.4. For the above reasons, as well as those set forth by the District Court, we will summarily affirm the District Court's order. See Third Circuit I.O.P. 10.6.