

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

STANLEY O. STIRES : CIVIL ACTION
 :
 v. :
 :
 RICHARD ZETTLEMOYER, et al. : NO. 98-1472

M E M O R A N D U M

WALDMAN, J.

September 20, 2000

This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff asserts a claim for violation of his Eighth Amendment rights. Plaintiff alleges that defendants were responsible for the denial or delay of medical care necessary to correct his degenerative sinus condition while he was an inmate in the Northampton County Prison ("the Prison"). Presently before the court is the Motion for Summary Judgment of defendants Albert Scott and Edwin Wood which is unopposed.

From the contemporaneous medical records and other competent evidence of record, as uncontroverted or otherwise viewed most favorably to plaintiff, the pertinent facts are as follow.

While an inmate at the Prison, plaintiff developed polyps in his nasal passages. This condition resulted in difficulty in breathing and eating, sinus infections, headaches and pain in the side of the face and skull. Plaintiff first sought treatment for his condition in early 1994, and was examined twice by an ear, nose and throat ("ENT") specialist at

Easton Hospital. In early 1995, the ENT specialist diagnosed plaintiff's condition as nasal polyps and sinusitis. Plaintiff received medication for the condition through the prison medical department.

At the end of 1995, the Prison engaged Correctional Healthcare Solutions ("CHS") to provide medical services for inmates. Defendant Wood was a physician employed by CHS to work at the Prison. Defendant Scott was similarly employed as a physician's assistant. The first medical request form submitted by plaintiff following engagement of CHS was on August 26, 1996. In response, defendant Scott visited plaintiff on August 28, 1996 and diagnosed plaintiff's condition as nasal polyps for which he ordered Ceftin, Rhinocort nasal spray and Prednisone. These medications had been effective in addressing the condition in the past.

Plaintiff next submitted a medical request form on October 3, 1996. In response, plaintiff was examined by defendant Wood on October 4, 1996. He diagnosed plaintiff's condition as nasal sinusitis and prescribed Benadryl. Plaintiff discontinued his use of Benadryl on October 11, 1996 because of side effects and asked for another consultation with an ENT specialist which Dr. Wood ordered on October 15, 1996.

On November 15, 1996, plaintiff was examined by Dr. Lee at Easton Hospital. Dr. Lee diagnosed plaintiff as having polyps

and multiple sinusitis. He recommended septoplasty, antrostomy and an endoscopic ethmoidectomy. That same day, Dr. Wood prescribed Benadryl and amoxicillin, an antibiotic, for plaintiff.

Plaintiff next submitted medical request forms on January 21, 1997 and January 24, 1997. Mr. Scott completed and Dr. Wood signed the paperwork to request surgery for plaintiff on January 24, 1997. The request was approved on January 31, 1997 and the recommended surgery was scheduled for February 21, 1997.

The nasal surgery entailed removal of significant tissue. Plaintiff's condition and the removal of tissue resulted in loss of the sense of smell and a diminished sense of taste. Since the surgery, plaintiff has had no recurrence of polyps or sinusitis and has been able to breathe freely.

To sustain his claim, plaintiff must show that a defendant was deliberately indifferent to a serious medical need. See Estelle v. Gamble, 429 U.S. 97, 106 (1976).

A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987). Deliberate indifference may be shown by an intentional denial or delay of needed medical care or an intentional interference with

prescribed treatment. See Estelle, 429 U.S. at 104-105.

Negligence or medical malpractice, however, do not constitute "deliberate indifference" and thus an inadvertent failure to provide medical care is not a violation of the Eighth Amendment. See Estelle, 429 U.S. at 105.

The court presumes that plaintiff's nasal condition, which affected his ability to breathe, was serious. He has not, however, presented evidence from which one reasonably could conclude that either movant was intentionally or deliberately indifferent to the need to treat the condition.

Plaintiff suggests that defendants Scott and Wood ignored his need for surgery and did not adequately treat his condition.

Plaintiff's first request for medical attention following the engagement of CHS was on August 26, 1996. In less than 48 hours he was seen by defendant Scott who ordered medications for plaintiff which had been effective in combating his condition in the past.

Plaintiff was examined by defendant Wood within 24 hours of submitting his next medical request form. When plaintiff requested a consultation with an outside specialist on October 11, 1996, Dr. Wood ordered such a consultation four days later. Dr. Wood prescribed an antibiotic and other medication for plaintiff.

Nine weeks after a definitive recommendation of a surgical procedure by Dr. Lee and three days after plaintiff's first post-consultation request, defendant Scott completed and defendant Wood signed the report and other paperwork to request surgery for plaintiff. The request was approved and the outside surgery was scheduled within a week. The surgical procedure was performed at Easton Hospital three weeks later.

Insofar as plaintiff suggests that surgery should have been employed earlier in lieu of medication, disagreement with the form of treatment for a particular condition at a given time does not give rise to an Eighth Amendment claim. See Estelle, 427 U.S. at 107; Inmates of Allegheny county Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979) (courts "disavow any attempt to second guess the propriety or adequacy of a particular course of treatment" as this "remains a question of sound professional judgment"); Suarez v. Camden County Board of Chosen Freeholders, 972 F. Supp. 269, 276 (D.N.J. 1997).

The competent evidence of record, viewed in a light most favorable to plaintiff, does not reasonably support a determination that the moving defendants were deliberately indifferent to plaintiff's need for medical care. They are thus entitled to summary judgment. Accordingly, their motion will be granted. An appropriate order will be entered.

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O R D E R

AND NOW, this day of September, 2000, upon consideration of the Motion for Summary Judgment of defendants Scott and Wood (Doc. #50) and in the absence of any response thereto, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and accordingly **JUDGEMENT is ENTERED** in the above action for defendants Ron Scott and Edwin Wood; and, as plaintiff's claims against the other named defendants herein have been terminated by court orders of October 23, 1998, September 24, 1999 and March 31, 2000, this case is closed.

BY THE COURT:

JAY C. WALDMAN, J.