

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

BRUCE JOHNSTON : CIVIL ACTION  
 :  
 v. :  
 :  
 SUPERINTENDENT DONALD VAUGHN, : NO. 00-CV-1844  
 MARTIN HORN, SECRETARY :  
 OF CORRECTIONS, and PENNSYLVANIA :  
 DEPARTMENT OF CORRECTIONS :

**MEMORANDUM**

Ludwig, J.

November 13, 2000

In this § 1983 action, defendants Donald Vaughn, Superintendent of the State Correctional Institution at Graterford, Martin Horn, Secretary of the Pennsylvania Department of Corrections, and the Pennsylvania Department of Corrections move for summary judgment. Fed. R. Civ. P. 56.<sup>1</sup> Jurisdiction is federal question. 28 U.S.C. § 1331. The motion will be granted.

The following are agreed facts:<sup>2</sup> On March 3, 1986, plaintiff Bruce Johnston was sentenced in the Court of Common Pleas of Chester County to six terms of life imprisonment, together with a 10-year and one to two-year term, each to be served consecutively, for six counts of first degree murder, one count of

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<sup>1</sup> Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The movant must show that there is no triable issue of fact. The nonmovant having the burden of proof at trial must point to affirmative evidence in the record – and not simply rely on allegations or denials in the pleading – in order to defeat a properly supported motion. Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986); Shelton v. University of Medicine & Denistry of New Jersey, 223 F.3d 220, 224 (3d Cir. 2000).

<sup>2</sup> See “Stipulation of Facts,” filed July 19, 2000.

aggravated assault, and one count of conspiracy. Since December 2, 1986, he has been incarcerated at the State Correctional Institution at Graterford.

On August 2, 1999, plaintiff was transferred from the general population to a segregation unit known as administrative custody.<sup>3</sup> On August 5, 1999, the Graterford Program Review Committee (PRC) informed him that this was done as a precautionary measure because his brother had escaped from the State Correctional Institution at Huntingdon. On August 20, 1999, his brother was apprehended; plaintiff has remained in administrative custody. In the meantime, the PRC has interviewed him six times and on each occasion, has

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<sup>3</sup> Administrative custody is defined by the relevant Department of Corrections Policy Bulletin as a “status of confinement for nondisciplinary reasons which provides closer supervision, control, and protection than is provided in general population.” Stip. of facts exh. A; DC-ADM 802-1. An inmate may be transferred to administrative custody for the following reasons:

- a. The inmate is a danger to some person(s) in the institution who cannot be protected by alternate measures;
- b. The inmate is a danger to himself/herself;
- c. The inmate is suspected of being or is the instigator of a disturbance;
- d. Placement in general population would endanger the inmate’s safety or welfare when it is not possible to protect him/her by other means;
- e. The inmate would pose an escape risk in a less secure status;
- f. The inmate has been charged with or is under investigation for a violation of institution rules and there is a need for increased control pending disposition of charges or completion of the investigations.
- g. The inmate has requested and been granted self-confinement;
- h. The inmate is being held temporarily for another authority and is not classified for the general population of the holding institution;
- i. No records are available to determine the inmate’s custody level;
- j. The inmate is a phase I capital case.

Stip. of facts exh. A; DC-ADM 802-2, 3.

decided not to return him to the general population.<sup>4</sup> Copies of reports setting forth the reasons were given to plaintiff following each interview.<sup>5</sup> While in administrative custody, in addition to the standard conditions for segregated inmates,<sup>6</sup> plaintiff has had a radio and television in his cell, two telephone calls per month, and permission to buy items from the prison commissary.

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<sup>4</sup> Plaintiff was interviewed on September 2 and November 3, 1999, and January 26 and April 17, 2000. Stip. of facts ¶ 15. Defendants proffer a PRC interview report dated July 19, 2000, def.s' mem. exh. B, to which plaintiff has not objected, and plaintiff moved to supplement the record with a PRC interview report dated October 21, 2000, to which defendants have responded, but not objected. On December 29, 1999, plaintiff appealed the PRC's prior decisions to Superintendent Vaughn, who denied them on January 2, 2000.

<sup>5</sup> According to the April 17 and July 19, 2000 reports, the PRC deemed plaintiff to be a security risk. This assessment was purportedly based on a statement by a corrections officer that plaintiff had confessed to participating in the homicide of an inmate at the State Correctional Institution at Pittsburgh. Def.s' mem. exh. B, C (DiGuglielmo Declaration ¶ 5). By letter dated August 30, 2000, Superintendent Vaughn affirmed the PRC's decision of July 19, 2000, stating "I believe your presence in general population may cause security concerns." Def.s' mem. exh. C. The report following the October 21, 2000 states that plaintiff is "currently in [administrative custody] as the result of his brother's escape from another SCI . . . continue [custody]." Pltf.'s resp. exh. A.

<sup>6</sup> Each cell has a bed, toilet, and sink with hot and cold running water. Inmates in administrative custody are entitled to the following: three meals a day, in their cells; a clean jumpsuit, towel and bed linens each week; footwear; two pairs of underwear and socks, which they can wash in their sinks; basic toiletries (soap, toothbrush, toothpaste, cup); three showers and shaves each week (mirrors are provided for shaves, then retrieved by staff); one haircut each month; cell cleaning materials once each week; one hour of outdoor exercise at least five days a week; one non-contact visit each week; and mail, both incoming and outgoing. A physician visits the administrative unit each day and sees any inmate who has requested medical attention. Nurses visit several times each day to dispense medication. Inmates may keep one box of legal or religious materials in their cells; may use a small law library in the administrative unit with another administrative custody inmate; and may request legal materials from the prison's main law library. Stip. of facts ¶¶ 9-12.

According to the complaint, defendants are violating plaintiff's Eighth and Fourteenth Amendment rights by confining him in administrative custody for an indefinite period of time without cause, or formal hearing, or notice of charges other than the PRC's administrative reviews. Cmplt. ¶¶ 33-48. To succeed on his § 1983 claims, plaintiff must show that defendants acted under color of state law and that their conduct deprived plaintiff of a right, privilege or immunity secured by the United States Constitution or by law. 42 U.S.C. § 1983; Conn v. Gabbert, 526 U.S. 286, 290, 119 S.Ct. 1292, 1295, 143 L. Ed. 2d 399 (1999).

Under the Fourteenth Amendment, protected liberty interests may arise from the Constitution itself or may be created by state law. Hewitt v. Helms, 459 U.S. 460, 466, 103 S.Ct. 864, 868-69, 74 L. Ed. 2d 675 (1983). An inmate has no liberty interest under the Due Process Clause to be classified in the general prison population, Sheehan v. Beyer, 51 F.3d 1170, 1175 (3d Cir. 1995). However, a state-created liberty interest may exist if the correctional institution's action imposes an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Connor, 515 U.S. 472, 484, 115 S. Ct. 2293, 2300, 132 L.Ed.2d 418 (1995). As recently explained by our Court of Appeals, an "atypical and significant hardship," under Sandin requires the examination of two factors: "1) the amount of time the prisoner was placed into disciplinary segregation; and 2) whether the conditions of his confinement in disciplinary segregation were significantly more restrictive than those imposed on other inmates in solitary confinement." Shoats v. Horn, 213 F.3d 140, 144 (3d

Cir. 2000) (citing Sandin, 515 U.S. at 486, 115 S. Ct. at 2293); see also Arce v. Walker, 139 F.3d 329, 335 (2d Cir. 1998) (Sandin “established an analysis under which the degree and duration of an inmate’s restraint are the key considerations to determine the existence of a state-created liberty interest”).

Plaintiff asserts that his confinement in administrative custody, from August 2, 1999 to the present, is atypical, given its alleged lack of purpose and indefinite duration. Pltf.’s mem. at 14-15. The same issue was determined in Griffin v. Vaughn, 112 F.3d 703 (3d Cir. 1997), in which a Pennsylvania inmate had also served 15 months in administrative segregation, without a hearing, pending an investigation of his rape of a prison guard. As stated in Griffin, “[g]iven the considerations that lead to transfers to administrative custody of inmates at risk from others, inmates at risk from themselves, and inmates deemed to be security risks, etc., one can conclude with confidence that stays of many months are not uncommon.” Id. at 708. Griffin concluded that the period spent in administrative custody was not “an atypical period of time” – and commented that it was “not extraordinary for inmates in a myriad of circumstances to find themselves exposed to the conditions to which Griffin was subjected.” Id. at 708-09; see also Jones v. Baker, 155 F.3d 810, 813 (6th Cir. 1998) (no liberty interest implicated following two and a half years in administrative segregation, without a hearing, where plaintiff was suspected of killing a prison guard during a riot).

Although Griffin did not specify an atypicality time limit, the Shoats decision this year observed that eight years in administrative confinement without

participation in educational, vocational or other organizational activities, subjects a plaintiff “to conditions that differ significantly from ‘routine’ prison conditions in Pennsylvania state institutions.” Shoats, 213 F.3d at 144 (finding that the inmate had a protected liberty interest, but had received all process due while in administrative custody). Griffin and Shoats, however, did not decide whether the deprivation alleged here – an indeterminate term of administrative custody – necessarily entails procedural due process protection. See Griffin, 112 F.3d at 708 (although plaintiff “also stresses that he could have been held indefinitely without a hearing . . . and that this would necessarily have violated his federal procedural due process rights . . . [w]e have no occasion to resolve that issue here . . .”); Shoats, 213 F.3d at 143.

A claim of indeterminacy is available to every inmate placed in administrative custody without a pre-established release date. To accord procedural due process protection on that basis without more would be inconsistent with Sandin’s formulation of “atypical and significant hardship,” which is a retrospective inquiry. The actual time spent in segregation must be the threshold consideration when the duration itself is claimed to transgress a liberty interest.

Here, the duration of plaintiff’s confinement, from August 2, 1999 to the present time, some 15 months, is not atypical – a la Griffin, 112 F.3d at 708. Moreover, plaintiff has produced no evidence that the conditions placed on him

are more onerous than those imposed on other administrative inmates.<sup>7</sup> In Shoats, the inmate was prohibited from participating in education, vocational or other organizational activities, could not visit the library, and was denied contact with his family. See Shoats, 213 F.3d at 144 (defendants' witness "concedes that he has never witnessed one example of such permanent solitary confinement in his 22 years with the DOC"). As restrictive as plaintiff's circumstances may be, they are, if anything, better than those of the inmate in Griffin, and not comparable to the conditions in Shoat. Griffin requires denial of his Fourteenth Amendment claims as a matter of law.<sup>8</sup>

Administrative confinement may amount to cruel and unusual punishment as proscribed by the Eighth Amendment. To establish a violation of the Eighth Amendment, an inmate must show that he has been deprived of "the minimal civilized measure of life's necessities." Griffin, 112 F.3d at 709 (quoting Young v. Quinlan, 960 F.2d 351, 359 (3d Cir. 1992)). Here, there are allegations

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<sup>7</sup> While conditions imposed in the segregation unit may be significantly more restrictive than those in the general population, *complt.* ¶¶ 17-18, "Sandin does not permit [a comparison of] the prisoner's own life before and after the alleged deprivation. Rather, . . . the prisoner's liberties after the alleged deprivation [must be compared] with the normal incidents of prison life." Asquith v. Department of Corrections, et al., 186 F.3d 407, 412 (3d Cir. 1999) (citing Sandin, 515 U.S. at 485-86, 115 S. Ct. at 2293); see Griffin, F.3d at 706 n.2 (noting that the baseline for determining "atypical and significant" in relation to administrative confinement is not the condition in the general prison population). The relevant inquiry is "whether the conditions of his confinement in [administrative] segregation were significantly more restrictive than those imposed upon other inmates in solitary confinement." Shoats, 213 F.3d at 144.

<sup>8</sup> Because no protected liberty interest has been found, the issue of whether plaintiff was given sufficient procedural safeguards need not be reached.

of a lack of medical care and treatment, cmplt. ¶ 21, and also that plaintiff's allergy problems were enhanced by the segregation, id. ¶ 49, but no supporting evidence has been presented. Instead, it was stipulated that physicians and nurses frequently visit the administrative unit to provide medical attention and dispense medication. Stip. of facts ¶ 11. As in Griffin, unless evidence is adduced to the contrary, the conditions in administrative custody "clearly do not involve a deprivation of any basic human need." Griffin, 112 F.3d at 709. Under the law, segregated confinement, difficult as it may be to endure, does not itself constitute cruel and unusual punishment, and in many instances it may be necessary. Plaintiff's Eighth Amendment claims also do not raise a triable issue.

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Edmund V. Ludwig, J.

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**ORDER**

AND NOW, this 13th day of November, 2000, defendants' motion for summary judgment is granted.

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Edmund V. Ludwig, J.