

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

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| <b>STANLEY BROWN,</b><br><b>Plaintiff,</b><br><br><b>v.</b><br><br><b>MARY V. LEFTRIDGE BYRD, et al.,</b><br><b>Defendants.</b> | <b>CIVIL ACTION</b><br><br><b>No. 00-3118</b> |
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**MEMORANDUM AND ORDER**

**Katz, S.J.**

**December 1, 2000**

Plaintiff Stanley Brown is an African American inmate who, at the time relevant to this action, was housed at the State Correctional Institute at Chester (SCI-Chester). He brings several claims of constitutional violations under 42 U.S.C. § 1983. His primary allegation is that officials at SCI-Chester, including defendant Sister Joan Henkel, discriminate against inmates on the basis of race in assigning cells. He also alleges that defendants Sergeant Johnnie Byers, Lieutenant Michelle Madison and non-moving defendant Nurse Judy Lubin harassed him because he is Muslim; that he received inadequate medical treatment; that defendant Supervisor Mary Leftridge Byrd was deliberately indifferent to the racial and religious discrimination and failed to train, discipline or otherwise supervise the other defendants; and that defendant Ms. Roxina Rumley, SCI-Chester's Health Care Administrator, failed to adequately supervise the nursing staff and responded to his complaints sarcastically. Now before the court is a motion by the Commonwealth employees for summary judgment.<sup>1</sup>

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1. Plaintiff's complaint also alleges claims against two non-Commonwealth employees, Nurse Supervisor Shirley Laws-Smith and Nurse Lubin. His claim against defendant Nurse Supervisor Laws-Smith is based on failure to properly supervise Nurse Lubin. These defendants have not

(continued...)

I. Background<sup>2</sup>

A. Racial Discrimination

Mr. Brown alleges that officials at SCI-Chester assigned him to a cell based solely on his race when he arrived at the institution on February 9, 2000, and when he was housed in the A-Unit, C-Pod from March 8, 2000, to April 26, 2000. Specifically, he claims that African American and white inmates are not allowed to share cells at SCI-Chester.<sup>3</sup>

The Department of Corrections (DOC) has identified a non-exhaustive list of factors to be evaluated in determining compatibility of cell mates, including familial relationships, age, geographic identity, any racial and ethnic biases of the inmates to be housed together, and interests. See Def. Ex. 18 (DOC Policy Statement 6.5.3, Single Celling (“Z”-Code) and Double Celling Housing Policy) at 3. Institutions may also consider other appropriate factors. See id. The policy also states that consideration of inmates’ racial and ethnic biases

shall not be interpreted to mean that only inmates of the same race should be celled together—rather its intent is to ensure that inmates who have exhibited documented history of interracial violence or a propensity to engage in such, should not be celled with a person upon whom they would be likely to act out.

Id.

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1. (...continued)

joined the instant motion but have filed a separate summary judgment motion.

2. The factual information in this section is drawn from the undisputed facts, except where noted. The facts are presented in the light most favorable to Mr. Brown and all reasonable inferences are drawn in his favor.

3. According to Mr. Brown’s complaint, Hispanic and Asian inmates “can be housed with whites.” Compl. § V.5.

When Mr. Brown first arrived at SCI-Chester, he was assigned to B-Unit. According to Mr. Brown, he was not interviewed regarding any compatibility factors prior to receiving his cell assignment.<sup>4</sup> According to Mark Jackson, who is the B-Unit manager, inmate information reports indicate that Mr. Brown and his original cell mate were compatible in that they were approximately the same age (Mr. Brown was born in 1959 and his cell mate in 1961), committed similar offenses (robbery and burglary), were from the Delaware Valley area, and reported Islam as their religion. See Jackson Decl. ¶ 4.

Mr. Brown transferred to A-Unit in March of this year. A-Unit is a therapeutic community where inmates participate in a drug and alcohol treatment program. As part of the program, they are encouraged to share their feelings and to challenge each other about inappropriate behavior. Because of the intensive and confrontational nature of the program, the A-Unit has a high rate of physical violence within SCI-Chester. According to Sister Henkel, the A-Unit manager, her primary consideration in making cell assignments is whether she believes the inmates will be compatible. Sister Henkel is aware of the DOC policy; she also attempts to accommodate inmates who indicate that they would like to share a cell, if the inmates are not likely to be a negative influence on each other. Henkel Decl. ¶ 19. Sister Henkel has noticed that Muslims frequently request to be celled with other Muslims or with non-Muslims who show respect for their religious practices. She believes that certain religious practices of Muslims, such as praying five times a day and certain cleanliness habits, can lead to friction if a cell mate is insensitive or disrespectful of those practices. See id. ¶ 6. In addition,

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4. Mr. Brown makes these allegations in his response to defendants' motion. He does not submit any affidavit or factual material in support of his allegations. However, given plaintiff's pro se status, the court will consider the allegations as if they had been appropriately submitted.

[s]ometimes inmates request cell mates who are relatives or friends, or who come from the same neighborhoods. Many times, the Spanish language becomes a factor that supports an inmate request for a cell mate. The result is that inmates who ask to cell together are frequently of the same race, ethnicity, and/or cultural background.

Id. ¶ 19.

When Mr. Brown entered the A-Unit on March 8, 2000, he was interviewed by Sister Henkel so that she could determine an appropriate assignment. Mr. Brown indicated that he wanted a bottom bunk but otherwise did not express any preferences regarding his cell mate. Sister Henkel assigned Mr. Brown to a cell with Leroy Glenn, an African American inmate who had moved to A-Unit at the same time as Mr. Brown because she believed that they would be compatible based on their age and religion. Mr. Glenn's self-reported religion is Islam<sup>5</sup> and at the time of the assignment, he was 50 and Mr. Brown was 41. This information is available from the inmates' reports. See Def. Ex. 5 (Glenn Inmate Information Report; Brown Inmate Information Report).<sup>6</sup> Sister Henkel assigned the bottom bunk to Mr. Brown. Mr. Glenn indicated to her that if a bottom bunk became available, he would like to be moved to it.

Shortly after arriving in the A-Unit, Mr. Brown began submitting complaints about his cell assignment. His first two complaints concerned the poor television reception in his cell. See Def. Ex. 2 (Brown Inmate Requests, dated March 9, 2000, and March 15, 2000). In his third request, he

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5. According to Mr. Brown, Mr. Glenn is a "member of the 'Nation of Islam,' which is different from my religion (Islam)." Brown Decl. (doc. 41) ¶ 2.

6. Although Sister Henkel states that she also believed Mr. Glenn and Mr. Brown to be compatible based on their agreement to cell together, Mr. Brown asserts that Sister Henkel questioned him solely regarding whether he needed a bottom bunk, and did not question him regarding religion or "anything else" when she interviewed him on March 8. See Brown Decl.(doc. 41) ¶ 3. Construing the facts in Mr. Brown's favor, the court finds for the purposes of this motion that he did not agree to share a cell with Mr. Glenn.

identified a specific cell, cell number 14, to which he wished to be moved. Id. (Brown Inmate Request, dated March 19, 2000). At the time of Mr. Brown's request, cell 14 was occupied by two white inmates, Mr. Burch and Mr. Georigi. Mr. Burch left shortly afterwards and was replaced by Mr. Fritz, a white inmate who had requested to cell with Mr. Georigi. According to Sister Henkel, Mr. Georigi had agreed to take a top bunk when he and Mr. Burch requested to cell together, but Mr. Georigi expected to be returned to a bottom bunk when Mr. Burch left. Mr. Brown alleges that Sister Henkel delayed in responding to his request to move into cell 14 until after it was occupied by Mr. Fritz.

Mr. Brown testified that the basis of his allegation of racial discrimination is his observation that African American and white inmates do not share cells in the A-Unit, rather than any statements made by Sister Henkel. See Brown Dep. at 30-31. According to the records submitted by the defendants, at the time of Mr. Brown's stay in A-Unit from March 8, 2000, to April 26, 2000, no cells were shared by African Americans and white inmates. See Def. Ex. 27.<sup>7</sup> Both before and after his stay, some cells in A-Unit did house both African American and white inmates, although the number was never higher than eight cells integrated in this manner on September 14, 2000. Each of A-Unit's four pods has 32 cells, although the number of cells available for double celling varies depending on the number of inmates requiring a single cell and the availability of cells.

Mr. Brown disputes the accuracy of old cell rosters submitted by Sister Henkel, pointing out that the cell rosters for February 16, 1999, indicate that the same white inmate is assigned to two

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7. Defendant's exhibit 27 was drawn from old cell rosters. The information is incomplete, because cell rosters are frequently discarded. See Henkel Decl. ¶¶ 18, 20. For example, the only roster reports available during the plaintiff's stay in A Unit are from March 9, 20, 24, and 31, and April 4, 2000.

different cells: first in A Unit, A-Pod with a black inmate, and second in A Unit, B-Pod with another white inmate. See Def. Ex. 4 (February 16, 1999, A Unit Cell Assignments). In her supplemental declaration, Sister Henkel notes that the March 10, 1999, roster indicates the same thing and ascribes this double assignment to a recording error. See Henkel Supp. Decl. ¶ 3.

In terms of the prison population, on August 15, 2000, SCI-Chester housed 642 African American inmates, 166 Caucasian inmates, 112 Hispanic inmates, and 2 inmates identified as “other.” According to Superintendent Leftridge Byrd, the racial breakdown on August 15 is typical for the prison this year. According to Sister Henkel, the majority of inmates in A-Unit is African American, “ranging from a slight majority to up to two thirds of the unit's population.” Henkel Decl. ¶ 21. Defendants have not produced comprehensive figures regarding the integration of cells at SCI-Chester generally.

According to Superintendent Leftridge Byrd, she has always emphasized to her staff that she will not tolerate race, ethnic or gender discrimination at SCI-Chester, either among staff or between staff and inmates. Upon learning of Mr. Brown’s lawsuit, she gave a verbal order to staff reminding them that racial discrimination was impermissible.

#### B. Remaining Allegations

According to Mr. Brown, Sergeant Byers and Lieutenant Madison frequently nag him about his dress, telling him to tuck his shirt in, turn down his collar, or unroll his pants leg. He alleges that this is religious discrimination because Muslims often roll up their pants. He also states that Sergeant Byers has made derogatory comments to him, such as “you damn Muslims.” Mr. Brown did not submit any written grievances regarding these instances of harassment. In addition, Mr. Brown claims that Sergeant Byers was disrespectful to him in May of this year while he was visiting

with his family. Mr. Brown administratively exhausted his grievance regarding this incident, although not until after he filed his complaint in this action.

He also alleges that he did not receive medical treatment after he reported blood in his stool in June of this year and that he has not received necessary dental care. Mr. Brown's complaints against Ms. Rumley stem from her failure to supervise Nurse Lubin, whom he alleges called him an "asshole." According to Ms. Rumley, she investigated the complaint and reminded medical staff members that they must act with professional integrity. See Rumley Decl. ¶ 6. Mr. Brown also did not submit any grievances, in accordance with DOC policy, regarding the lack of medical care or Ms. Rumley's failure to supervise.

## II. Discussion<sup>8</sup>

### A. Racial Discrimination

In order to demonstrate a violation of the Equal Protection clause, a plaintiff must show more than discriminatory impact. See Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 264-65 (1977). Rather, "[p]roof of racially discriminatory intent or purpose is required[.]"

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8. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. See Fed. R. Civ. P. 56(c). At the summary judgment stage, the court does not weigh the evidence and determine the truth of the matter. Rather, it determines whether or not there is a genuine issue for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In making this determination, all of the facts must be viewed in the light most favorable to, and all reasonable inferences must be drawn in favor of, the non-moving party. See id. at 256.

The moving party has the burden of showing there are no genuine issues of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Mathews v. Lancaster Gen. Hosp., 87 F.3d 624, 639 (3d Cir. 1996). In response, the non-moving party must adduce more than a mere scintilla of evidence in its favor, and cannot simply reassert factually unsupported allegations contained in its pleadings. See Anderson, 477 U.S. at 249; Celotex, 477 U.S. at 325; Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989).

Id. at 265; see also Simpson v. Horn, 80 F. Supp.2d 477, 481 (E.D. Pa. 2000) (holding that prisoner cannot prevail on equal protection claim by showing that prison policy has the effect of segregating prisoners by race, but must demonstrate defendants' intent to cause segregation). "Discriminatory purpose . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected . . . a particular course of action at least in part because of, and not merely in spite of, its adverse effects upon an identifiable group." Personnel Adm'r v. Feeney, 442 U.S. 256, 279 (1979) (citation, punctuation omitted); see also Hernandez v. New York, 500 U.S. 352, 359-60 (1991). Discriminatory impact is a relevant factor in evaluating discriminatory intent, "but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution." Washington v. Davis, 426 U.S. 229, 242 (1976).

As a general matter, "[p]risoners are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination based on race." Wolff v. McDonnell, 418 U.S. 539, 556 (1974); see also Lee v. Washington, 390 U.S. 333 (1968). While prisoners do not lose their constitutional rights when they become incarcerated, those rights are necessarily limited. See Waterman v. Farmer, 183 F.3d 208, 212 (3d Cir. 1999). Thus, "racial segregation, which is unconstitutional outside prisons, is unconstitutional within prisons, save for 'the necessities of prison security and discipline.'" Cruz v. Beto, 405 U.S. 319, 321 (1972) (per curiam) (quoting Lee, 390 U.S. at 334); see also Johnson v. California, 207 F.3d 650, 655 (9th Cir. 2000); Sockwell v. Phelps, 20 F.3d 187, 191 (5th Cir. 1994). Constitutional challenges to laws, regulations, and policies governing prison management must be examined under the framework of Turner v. Safley, 482 U.S. 78 (1986). See Waterman, 183 F.3d at 212. In Turner, the Supreme Court held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is

reasonably related to legitimate penological interests.” Id. 482 U.S. at 89. According to the Court, this less stringent standard of review is necessary because “[s]ubjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration.” Id.

Construing all evidence in the plaintiff’s favor, Mr. Brown has failed to produce evidence of discriminatory purpose, other than evidence of discriminatory impact. While Mr. Brown is correct in arguing that some of the evidence produced by the defendants regarding integration of cells appears unreliable, and the remaining evidence suggests that African Americans and whites only rarely share cells, he has not shown that this situation is the result of purposeful discrimination. Rather, he relies on his own observation of the lack of integration, his own experience in sharing cells only with African American inmates, and the defendants’ statistical evidence, which, even if taken as proof that the prison population is largely segregated, does not, in itself, evidence a discriminatory purpose.

The only evidence that Mr. Brown has produced that is arguably evidence of discriminatory purpose is his allegation that Sister Henkel did not move him into cell 14 as he requested because doing so would result in an integrated cell. Even assuming that Mr. Brown is correct that Sister Henkel delayed in responding to his request until another white inmate was moved into cell 14, Sister Henkel has articulated non-discriminatory reasons for her decision to pair two white inmates: Mr. Georigi and Mr. Fritz requested to share a cell, something she tries to accommodate if possible, and both Mr. Brown and Mr. Georigi wanted a bottom bunk. Mr. Brown has not demonstrated that

Sister Henkel's decision to put two white inmates in cell 14 was because of race. See Feeney, 442 U.S. at 279.

Mr. Brown's evidence stands in stark contrast to the plaintiff's evidence in Simpson, where the court denied summary judgment on the plaintiff's claims of racial segregation at SCI-Graterford because the plaintiff had put forth sufficient evidence to establish a genuine issue of fact on the question of intent. See id., 80 F. Supp. at 482. Simpson's evidence included a statement by an unnamed guard that " 'you know we don't play that up here anymore' " in response to the plaintiff's request to cell with a white inmate; a chart in a unit manager's office that identified cells as black, white or Hispanic; and a memorandum from the Deputy Superintendent directing that " 'effective immediately, the practice of placing inmates of the same race in the same cell will be modified.' " Id., at 482-84. On the other hand, Mr. Brown's suspicion that Sister Henkel delayed in responding to his request to move into cell 14 in order to avoid assigning him a white cell mate and the statistical evidence indicating that African Americans and whites rarely share cells are not enough to establish discriminatory purpose, given the defendants' evidence that cell assignments are made based on compatibility of non-discriminatory factors.

Moreover, even if the defendants' policy of assigning cells based on perceived compatibility impinges on Mr. Brown's constitutional right to equal protection, that policy withstands Turner scrutiny in that it is reasonably related to the prison's legitimate penological interests in the safety and security of its prison. See Simpson, 80 F. Supp.2d at 480. The DOC policy clearly states that only an inmate's racial bias, not his race, may be considered as a compatibility factor and that the policy should not be interpreted to allow assignments based on race. Nor has Mr. Brown demonstrated that officials at SCI-Chester failed to comply with the DOC policy. Mr. Brown's

initial cell assignment in B-Unit was based on compatibility in terms of age, religion, geographical similarity, and roughly equivalent criminal offenses. In A-Unit, compatibility of cell mates is an especially pressing concern, given the high incidence of violence in that unit resulting from the treatment program that requires inmates to both support and confront each other in their recoveries. Sister Henkel's pairing of Mr. Brown and Mr. Glenn was based on her perception that they were compatible because of their relative closeness in age; her belief that they were both Muslim; and Mr. Glenn's willingness to take a top bunk, at least temporarily. In so far as Sister Henkel did not move Mr. Brown into a cell with Mr. Georigi, as noted, this decision was based on her belief that Mr. Fritz and Mr. Georigi were compatible since they had requested to cell together and Mr. Fritz was apparently willing to accommodate Mr. Georigi's desire for a bottom bunk. Thus, Mr. Brown has not shown that his cell assignments were in violation of DOC policy. The court acknowledges the danger that, unless care is exercised, racial segregation may occur under the guise of assignment according to "compatibility." Nevertheless, given the lack of evidence regarding discriminatory intent and the deference to be accorded to prison officials under Turner, Mr. Brown has not demonstrated that he has been subjected to constitutionally impermissible racial discrimination.

## B. Other Allegations<sup>9</sup>

### 1. Supervisory Liability

Mr. Brown alleges that Ms. Leftridge Byrd, in her capacity as the superintendent of SCI-Chester, is responsible for the discrimination in the assignment of cell mates. As a preliminary

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9. Mr. Brown's response to the defendants' motion for summary judgment is confined to his complaints of racial discrimination; supervisory liability and failure to train; and his contention that he exhausted his administrative remedies regarding the racial discrimination. Given Mr. Brown's pro se status, the court does not assume that he abandons his other claims.

matter, because the court has found that there was no discrimination in the assignment of Mr. Brown's cell mates, there cannot be a claim against Ms. Leftridge Byrd for her failure to prevent or correct such discrimination. See Telepo v. Palmer Township, 40 F. Supp.2d 596, 612 (E.D. Pa. 1999) (holding that if there is no underlying constitutional violation by subordinates, there is claim supervisory liability against the superior).

Even assuming, arguendo, that Mr. Brown has demonstrated discrimination in the assignment of cell mates at SCI-Chester, his claim against Ms. Leftridge Byrd still fails. There is no respondeat superior liability for a claim brought under section 1983, see, e.g., Polk County v. Dodson, 452 U.S. 312, 325 (1981); Rouse v. Plantier, 182 F.3d 192, 200 (3d Cir. 1999), as Mr. Brown acknowledges. In order to prevail on a claim of supervisory liability, a plaintiff must demonstrate both deliberate indifference by the superior and a close causal relationship between the identified deficiency and the plaintiff's ultimate injury. See Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989); see also id. at 1117-18 (holding that the standards for municipal liability under section 1983 should be applied to individual liability for supervisors). The Third Circuit has noted that, in cases alleging supervisory liability, "the rubric 'supervision' entails, among other things, training, defining expected performance by promulgating rules or otherwise, monitoring adherence to performance standards, and responding to unacceptable performance, whether through individualized discipline or further rulemaking." Id. at 1116. A supervisor is liable for failing properly to train, discipline or control a subordinate only if the supervisor (1) either knew contemporaneously of the subordinate's offending behavior or knew of prior pattern of similar incidents or circumstances and (2) acted in a manner that reasonably could be found to communicate a message of approval to the subordinate. See Montgomery v. De Simone, 159 F.3d 120, 126-27

(3d Cir. 1998); see also Robinson v. City of Pittsburgh, 120 F.3d 1286, 1294 (3d Cir. 1997) (holding that actual knowledge and acquiescence is sufficient to support a finding of supervisory liability).

Here, assuming that the cell assignments were discriminatory, Mr. Brown has put forth no evidence that Ms. Leftridge Byrd was contemporaneously aware of this or that she knew of a pattern of discrimination in cell assignments. In addition, Mr. Brown has failed to show that she acted in a manner that communicated her approval of such behavior. According to Ms. Leftridge Byrd, as superintendent of SCI-Chester, she has repeatedly emphasized to her staff that race, ethnic, and gender discrimination will not be tolerated, either among staff or between staff and inmates. She orally renewed this order upon learning of Mr. Brown's law suit. Thus, even assuming Mr. Brown had suffered racial discrimination, he has not carried his burden of proving supervisory liability against Ms. Leftridge Byrd.

Mr. Brown also alleges that Ms. Rumley is liable in her capacity as the SCI-Chester health care administrator for her failure to properly supervise Nurse Lubin. Even assuming, arguendo, that Mr. Brown can prevail on his claim that Nurse Lubin violated his constitutional rights, he has failed to show that Ms. Rumley should be held liable. There is no evidence that Ms. Rumley was contemporaneously aware of Nurse Lubin's alleged harassment, or that the nurse engaged in a pattern of behavior of which Ms. Rumley was aware. Moreover, upon learning of Mr. Brown's complaints regarding the nurse, Ms. Rumley investigated his claims and the medical staff was reminded that they must act with professional integrity. While Ms. Rumley refused to reveal whether Nurse Lubin was disciplined, her actions upon learning of the alleged constitutional violation cannot be reasonably construed as indicating approval.

Finally, Mr. Brown’s complaint appears to raise some claims regarding inadequate medical care stemming from an incident in June 2000 where he reported blood in his stool but did not receive medical treatment. He also claims that he has not received necessary dental care. Because he has not sued any health care provider in connection with this claim, the court assumes that his medical care claims are brought against Ms. Leftridge Byrd and Ms. Rumley on a supervisory liability theory as well. Denial of medical care constitutes a constitutional violation where a prison official has been deliberately indifferent to the serious medical needs of an inmate. See Estelle v. Gamble, 429 U.S. 97, 104 (1976); Monmouth County Correctional Inst. v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987). In order to demonstrate deliberate indifference, a plaintiff must show that the official “knows of and disregards an excessive risk to inmate health or safety.” Farmer v. Brennan, 511 U.S. 825, 838 (1994). Under Farmer, deliberate indifference is a subjective inquiry—the official “must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and he must also draw the inference.” Id. Negligence on the part of the official will not sustain a claim of inadequate medical treatment. See Durlmer v. O’Carroll, 991 F.2d 64, 67 (3d Cir. 1993). Mr. Brown has produced no evidence that any health care provider at SCI-Chester was subjectively aware of a substantial risk of serious harm to him. Furthermore, even assuming his rights were violated by a health care provider, Mr. Brown has not demonstrated that Ms. Leftridge Byrd and Ms. Rumley were aware of any violation of this nature or that they acquiesced in a subordinate’s behavior. Thus, Mr. Brown’s claim of inadequate medical treatment fails because he has not shown an underlying constitutional violation or that Ms. Leftridge Byrd and Ms. Rumley are liable as supervisors.

## 2. Harassment

Mr. Brown has produced evidence that Sergeant Byers made derogatory remarks regarding his religion. See id. at 93 (stating that Sergeant Byers had made remarks to him along the lines of “you damn Muslims”). Nevertheless, while distasteful and inappropriate, discriminatory statements, in and of themselves, do not rise to the level of a constitutional violation under 42 U.S.C. § 1983. See, e.g. Haussman v. Fergus, 894 F. Supp. 142, 149 (S.D.N.Y. 1995) (stating that taunts, insults and racial slurs do not comprise an infringement of a constitutional guarantee); Wright v. Santoro, 714 F. Supp. 665, 667 (S.D.N.Y. 1989) (holding that racially discriminatory statements, without more, do not amount to a constitutional violation in a prisoner civil rights action) aff’d 891 F.2d 278 (2d Cir. 1989); Bolin v. Rice, No. C941003SI, 2000 WL 342676, at \*4 (N.D. Cal. March 20, 2000) (holding that verbal harassment of inmate that did not burden inmate’s ability to practice his religion was not a constitutional violation). Similarly, Mr. Brown’s allegations of nagging by Lieutenant Madison and Sergeant Byers regarding his dress and his allegation that Sergeant Byers was disrespectful to him in the visiting room does not amount to religious harassment. He has not produced any evidence that either the nagging or the visiting room incident were motivated by his religion. In so far as Mr. Brown’s complaint against defendant Rumley stems from her sarcastic responses to his grievances, those actions simply do not rise to the level of a constitutional violation.

C. Failure to Exhaust Administrative Remedies

Alternatively, Mr. Brown has failed to exhaust his administrative remedies prior to filing his complaint in this action for his claims regarding harassment by Lieutenant Madison and Sergeant Byers, inadequate medical care, and supervisory liability against Ms. Rumley.<sup>10</sup> Under the Prison

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10. There is a factual dispute on the question of whether Mr. Brown exhausted his claim regarding discriminatory practices in cell assignments, and accordingly, the court does not grant

(continued...)

Litigation Reform Act of 1996, “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). The DOC provides for a three step inmate grievance process. See Def. Ex. 19 (DOC Consolidated Inmate Grievance Review System, Policy No. DC-ADM 804); Booth v. Churner, 206 F.3d 289, 292 n.2 (3d Cir. 2000) (setting forth the DOC grievance process). The first step is written submission of the grievance to the facility/regional grievance coordinator; the coordinator has ten working days to provide a written response to the initial grievance. See Booth, at 292 n.2. If the inmate is not satisfied with the response, he or she has five days to make an intermediate appeal to the appropriate intermediate review personnel; again, the inmate must receive a response within ten working days. Id. The final step is an appeal, within seven days, to the Central Office Review Committee. Id.

Mr. Brown did not submit an initial grievance on his claims regarding Sergeant Byers or Lieutenant Madison’s alleged religious harassment, his medical treatment, or Ms. Rumley’s failure to adequately supervise the medical staff. Thus, these claims have not been exhausted. He did not administratively exhaust his claim of disrespectful treatment by Sergeant Byers in the visiting room until after he filed his complaint in the instant action.

### III. Conclusion<sup>11</sup>

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10. (...continued)  
summary judgment on this issue on the basis of failure to exhaust administrative remedies.

11. The defendants also seek summary judgment on the basis of qualified immunity. Because Mr. Brown has not established that his constitutional rights have been violated, the court does not decide the defendants’ qualified immunity defense. See Conn v. Gabbert, 526 U.S. 286, 290  
(continued...)

Mr. Brown has not demonstrated that officials at SCI-Chester discriminated against him on the basis of race in his cell assignments. Nor has he demonstrated that the DOC policy regarding compatibility of cell mates, either in itself or as applied to him, is constitutionally invalid under Turner. His claims of religious harassment, inadequate medical treatment, and supervisory liability also fail. Accordingly, the court grants summary judgment in favor of the moving defendants.

An appropriate Order follows.

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11. (...continued)  
(1999) (holding that in determining qualified immunity, “a court must first determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all.”)

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

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|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| <b>STANLEY BROWN,</b><br><b>Plaintiff,</b><br><br><b>v.</b><br><br><b>MARY V. LEFTRIDGE BYRD, et al.,</b><br><b>Defendants.</b> | <b>CIVIL ACTION</b><br><br><b>No. 00-3118</b> |
|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|

**ORDER**

**AND NOW**, this 1<sup>st</sup> day of December, 2000, upon consideration of the Motion for Summary Judgment of defendants Leftridge Byrd, Henkel, Rumley, Madison and Byers, and the response thereto, it is hereby **ORDERED** that the motion is **GRANTED**. Plaintiff's complaint against defendants Leftridge Byrd, Henkel, Rumley, Madison, and Byers is **DISMISSED** with prejudice.

**BY THE COURT:**

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**MARVIN KATZ, S.J.**