

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

FREDERICK RIVERS	:	CIVIL ACTION
	:	
v.	:	NO. 00-3161
	:	
MARTIN F. HORN, SECRETARY,	:	
DONALD T. VAUGHN, WARDEN,	:	
DAVID DIGUGLIELMO, FACILITY	:	
MANAGEMENT, L.T. REDDICK,	:	
LT. R. PICKENS, SGT. P. CURRAN,	:	
MARY CANNIO, HEARING EXAMINER,	:	
MR. SWARTZ, MAINTENANCE	:	
SUPERVISOR, MR. ED DENNIS,	:	
UNIT MANAGER, MR. PETE FLECHER,	:	
FOOD SERVICE SUPERVISOR	:	
in their individual and official capacities	:	

**MEMORANDUM AND ORDER**

YOHN, J.

MARCH , 2001

Plaintiff brings this *pro se* complaint (Doc. No. 6) under 42 U.S.C. § 1983 alleging various violations of his constitutional rights while he has been a prisoner at the State Correctional Institution at Graterford. Defendants filed a motion for summary judgment on September 18, 2000 (Doc. No. 11). On request of plaintiff, by Order of October 5, 2000, the court extended the time for him to respond to the motion until November 30, 2000. Upon further motion of plaintiff, by Order of December 6, 2000, I extended his time to respond until January 10, 2001. Nevertheless, plaintiff still did not file a response to the motion. However, because plaintiff was acting *pro se*, I scheduled oral argument for February 26, 2001. Thereafter, on March 1, 2001, defendant Lt. Reddick filed a separate motion for summary judgment (Doc. No. 22), to which plaintiff did not respond. For reasons stated herein, defendants' motion for

summary judgment will be granted in part as to the due process claim in Count I and as to Counts II, III, IV, V, and VI. Summary judgment as to the First Amendment claim contained in Count I will be denied. Additionally, defendant Reddick's motion for summary judgment will be denied.

Count I of plaintiff's complaint appears to allege a violation of plaintiff's liberty interest under the due process clause of the Fourteenth Amendment because he was sentenced to 60 days in the restricted housing unit.<sup>1</sup> Plaintiff, however, has no protected liberty interest in any particular housing status or a particular custody level. *See Sandin v. Conner*, 515 U.S. 472, 478 (1995) ("Due process clause does not protect every change in conditions of confinement . . ."). Therefore, defendants' motion for summary judgment will be granted with reference to this claim.

Count I also alleges a violation of plaintiff's First Amendment rights because he states that defendant Lt. Reddick wrote the misconduct report against him in retaliation for plaintiff having filed previously a grievance against Lt. Reddick. Moreover, plaintiff asserts that this

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<sup>1</sup>Defendant Reddick argues that plaintiff's Count I claims against him are time-barred pursuant to Pennsylvania's two-year statute of limitations. *See Bougher v. Univ. of Pittsburgh*, 882 F.2d 74, 78 (3d Cir. 1989). Moreover, Reddick submits that the "mailbox rule" developed by the Supreme Court in *Houston v. Lack*, 487 U.S. 266 (1988), is inapplicable to the instant case. In *Houston v. Lack*, the Court held that a prisoner's notice of appeal of a habeas corpus petition is "filed" when the prisoner delivers it to prison authorities. *Id.* at 275-77. Since then, a majority of federal courts that have considered whether the rule of *Houston* should be extended to include *pro se* prisoner complaints have extended the rule. *See, e.g., Cooper v. Brookshire*, 70 F.3d 377 (5<sup>th</sup> Cir. 1995); *Dory v. Ryan*, 999 F.2d 679 (2d Cir. 1993), *modified on other grounds on reh'g*, 25 F.3d 81 (1994); *Garvey v. Vaughn*, 993 F.2d 776 (11<sup>th</sup> Cir. 1993); *Lewis v. Richmond*, 947 F.2d 733 (4<sup>th</sup> Cir. 1991); *Dunn v. White*, 880 F.2d 1188 (10<sup>th</sup> Cir. 1989), *cert. denied*, 493 U.S. 1059 (1990). Although the Third Circuit has not ruled on this issue, a district court in the circuit has held the mailbox rule inapplicable to *pro se* prisoner complaints. *See Jackson v. Nicoletti*, 875 F. Supp. 1107, 1111-1114 (E.D. Pa. 1994). I, however, choose to follow the majority and extend the *Hudson* rule to the filing of a *pro se* prisoner's § 1983 complaint. Accordingly, the fact that petitioner commenced this action on June 22, 2000, two years and one day after Lt. Reddick issued the misconduct, does not bar his complaint.

misconduct report resulted in his confinement in the restricted housing unit. At argument, plaintiff stated that he filed a grievance against Lt. Reddick on June 9, 1998, which resulted in the misconduct report of June 21, 1998, which caused his confinement.

On the same day as oral argument, the Third Circuit issued a decision in *Rausser v. Horn*, 241 F.3d 330 (3d Cir. 2001), which clarified the standards to apply in analyzing a claim of this nature. First, “a prisoner-plaintiff in a retaliation case must prove that the conduct which led to the alleged retaliation is constitutionally protected.” *Rausser*, 241 F.3d at \*333. Because neither party has briefed the issue of whether the grievance against Lt. Reddick is constitutionally protected, I will accept plaintiff’s contention that it is so protected for purposes of this motion.

Second, the prisoner must show that he “suffered some ‘adverse action’ at the hands of the prison officials . . . ‘sufficient to deter a person of ordinary firmness from exercising his [constitutional] rights.’” *Id.* Plaintiff seems to have met this burden by alleging that the misconduct report resulted in his confinement in the restricted housing unit.

Third, petitioner must allege sufficiently that the grievance was a “substantial or motivating factor” in the decision to discipline him. *See Id.* Defendants together, and defendant Reddick separately, allege that because Lt. Reddick was never aware of the June 9, 1998 grievance, plaintiff has failed to establish the requisite causal connection. At the hearing, however, plaintiff stated that he told personally Lt. Reddick about the grievance. Clearly, this is a factual issue not appropriately resolved at this stage. Moreover, defendant Reddick argues that certain facts, such as the proximity in time between the grievance and misconduct reports, do not demonstrate necessarily a causal connection. Reddick, however, must recognize that such facts may contribute to a fact-finder’s determination regarding causation. Accordingly, the weight to

be attributed to these facts is a decision reserved for the fact finder. Reddick also submits that the misconduct report would have happened regardless of the filed grievance. In support of this argument, Reddick points out that plaintiff in his deposition admits to making the remarks attributed to him in the misconduct and that Lt. Reddick interpreted the remarks and plaintiff's behavior as threatening. Nevertheless, because these two admissions do not resolve the causation inquiry as a matter of law, this factual issue also must be reserved for the finder of fact.

Finally, the defendants "may still prevail by proving that they would have made the same decision absent the protected conduct for reasons reasonably related to a legitimate penological interest." *Id.* at \*334. Defendants allege that plaintiff might have received the June 21, 1998 misconduct report in any event; however, this clearly is a factual issue that must be resolved by the fact finder. Therefore, both motions for summary judgment on this First Amendment claim will be denied.<sup>2</sup>

In Count II of plaintiff's complaint, he alleges that his due process rights were violated in connection with his misconduct hearing because the hearing examiner was biased, gave him excessive administrative custody time, failed to allow him to call witnesses and present rebuttal evidence, and failed to create a written statement as to the evidence upon which she relied and the reasons for her decision. In *Sandin v. Conner*, 515 U.S. 472 (1995), the Supreme Court noted

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<sup>2</sup>Defendants also argue that they are entitled to qualified immunity from suit "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Crawford-El v. Britton*, 523 U.S. 574, 588 (1998) (citation omitted). Reddick submits that "a reasonable official in Lt. Reddick's position would have issued the misconduct regardless of whether or not the official knew about the grievance previously filed by Plaintiff." Reddick Mot. for Summ. J. at 8. This, however, is a question of fact reserved for the fact finder. As such, summary judgment will not be granted to defendants pursuant to this argument.

that the prisoner’s “discipline in segregated confinement did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest.” 515 U.S. at 486. Accordingly, because the prisoner-plaintiff had no liberty interest to protect, the refusal to allow him to call his witnesses at the misconduct hearing was not a violation of procedural due process. Moreover, in *Griffin v. Vaughn*, 112 F.3d 703 (3d Cir. 1987), our court of appeals likewise concluded that the conditions experienced by the prisoner in administrative custody “did not impose on him ‘atypical and significant hardship,’ that he was thus deprived of no state created liberty interest, and that the failure to give him a hearing prior to his transfer to administrative custody was not a violation of the procedural due process guaranteed by the United States Constitution.” 112 F.3d at 706. Therefore, summary judgment will be entered in favor of defendants in connection with this claim.

In Count II, plaintiff also alleges a violation of his Eighth Amendment rights. It is difficult to understand how a misconduct hearing, even if tainted by the deficiencies alleged, could constitute cruel and unusual punishment. Moreover, plaintiff does not allege that he was deprived of “the minimal civilized measure of life’s necessities” required to form the basis of an Eighth Amendment violation. *See Hudson v. McMillan*, 503 U.S. 1, 9 (1992) (citation omitted). Finally, no physical injury is alleged, only mental or emotional injury. *See* 42 U.S.C. § 1997e (e). Therefore, summary judgment will be granted to the defendants.

Count III of plaintiff’s complaint alleges a violation of the Eighth Amendment by Lt. Pickens and Sgt. Curran. Because plaintiff has agreed that Pickens and Curran should be dismissed as defendants, summary judgment will be entered in favor of all defendants with reference to this claim.

In Count IV, plaintiff alleges a violation of his Eighth Amendment rights because defendant Schwartz, the maintenance supervisor at Graterford, failed to correct the “inadequate ventilation or defective air ventilation” on L-BLK, J-BLK, and in the restricted housing unit that resulted in plaintiff suffering “breathing problems.” *See* Compl. at ¶¶ 94-97. Plaintiff further alleges that he suffered sneezing, coughing, choking, heat exhaustion, extreme headaches, and loss of consciousness because of the conditions. At oral argument, however, plaintiff conceded that he had not exhausted his administrative remedies with reference to this claim relating to his confinement for the periods June 21, 1998 to September 19, 1998 and July 24, 1999 to September 24, 1999, and consequently, that the claim must be dismissed. In addition, only extreme deprivations denying “the minimal civilized measures of life’s necessities” make out a claim for violation of the Eighth Amendment and these allegations do not meet that standard. *See Hudson*, 503 U.S. at 9. Accordingly, defendants’ motion for summary judgment will be granted on this claim.

In Count V of plaintiff’s complaint, he alleges a violation of the Eighth Amendment with reference to various procedures in the E-BLK, E-2 Section, in that some prisoners are afforded yard privileges twice a day while others only have them once a day. Plaintiff also alleges that he and other inmates are being denied gym privileges and “picture taking in the gym and the movies.” *See* Compl. at ¶ 99. Again, plaintiff concedes that he did not exhaust his administrative remedies regarding this claim and therefore, that the claim must be dismissed. Additionally, plaintiff admits in his deposition that he was treated like all of the other inmates in that section. In any event, plaintiff’s allegations are neither sufficient to make out an Eighth Amendment claim, nor is the requisite physical injury alleged. *See Hudson*, 503 U.S. at 9; 42

U.S.C. § 1997e (e).

Finally, in Count VI of the complaint, plaintiff alleges a violation of his Eighth Amendment rights because various meats have not been cooked thoroughly enough to prevent sickness, because hair nets are not being worn by staff or inmates, and because vegetables are not being cleaned. In addition, he alleges that the food served at Graterford does not meet nutritional requirements, that fruit is rotten and discolored, and that tables and food trays are not properly cleaned. As a result, plaintiff states that he has had to “sacrifice certain meals because the food is uneatable” and that on one occasion he became sick and went to the prison doctor. *See* Compl. at ¶ 109. These claims, too, are barred under 42 U.S.C. § 1997e (e) because plaintiff has suffered no physical injury. Moreover, the Eighth Amendment requires proof that plaintiff objectively was subjected to serious harm or a substantial risk of serious harm. *See Wilson v. Seiter*, 501 U.S. 294 (1991). Plaintiff has submitted neither and, in fact, during his deposition admitted that he is healthy. Accordingly, summary judgment will be entered in favor of defendants on this claim.

For the foregoing reasons, summary judgment will be entered for defendants on Counts II, III, IV, V, and VI of plaintiff’s complaint. Regarding Count I, summary judgment will be entered in favor of defendants concerning plaintiff’s due process claim and summary judgment will be denied on plaintiff’s First Amendment claim. Defendant Reddick’s motion for summary judgment will be denied.

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in their individual and official capacities	:	

**ORDER**

YOHN, J. MARCH , 2001

AND NOW, this            day of March, 2001, upon consideration of defendants' motion for summary judgment (Docs. No. 11, 26) and defendant Lt. Reddick's motion for summary judgment (Doc. No. 27) and oral argument held thereto, IT IS HEREBY ORDERED that:

1. Defendants' motion for summary judgment is GRANTED in part with respect to the due process claim of Count I and Counts II, III, IV, V, and VI of plaintiff's complaint; and
2. Defendants' motion for summary judgment is DENIED in part concerning the First Amendment claim of Count I; and
3. Defendant Reddick's motion for summary judgment is DENIED.

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William H. Yohn, Jr.