

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

JAMES ALLEN JONES, :
Plaintiff :

v.

NO. 00-CV-1622

TIMOTHY A. TABOR, WILLIAM J.
CHANCELLOR, and JOSEPH KRICZKY,
of the Pennsylvania Department *of*
Corrections, all in their individual
and official capacities,
Defendants

MEMORANDUM AND ORDER

McLaughlin, J.

April 11, 2003

James Allen Jones brings an action under 42 U.S.C. §
1983 against three Pennsylvania Department of Corrections
officers, Timothy A. Tabor, William J. Chancellor and Joseph
Kriczky. The plaintiff alleges that the defendants failed to
protect him from a known risk of serious harm from another
prisoner. The parties have filed cross motions for summary
judgment on liability. The Court **will** deny both motions.

I. Undisputed Facts

At oral argument on the motions, the Court established
that the following facts **are** not in dispute. Transcript 2-3.

A. Background

On February 8, 1999, the plaintiff was incarcerated in the Commonwealth of Pennsylvania's Correctional System as a result of an incident that involved the shooting and subsequent death of his brother, Marcus Jones. Two other men were also incarcerated pursuant to this incident: Patrick Palmer, who was convicted of killing Marcus Jones; and Lance Grant, Jones' other brother.

Between the time of this incident and Jones' trial, Jones was attacked three times and he believed that Palmer was involved in the attacks. A month after Jones' brother was killed, Jones was shot in a "drive-by" shooting in West Philadelphia; he learned that Palmer was involved in that shooting, and feared that Palmer would try to kill him again. While they were being held in the Philadelphia County Prison ("PCP") awaiting trial, Palmer attacked Jones. As a result, the two men were separated. During the same period at PCP, Palmer's friend Jose Cacho tried to stab Jones.

Jones, Grant and Palmer were ultimately convicted. Palmer knew that his placement into Pennsylvania's correctional system meant potential contact with Palmer. Based on Palmer's recent conduct, the plaintiff feared for his life.

B. Separations

The Department of Corrections has a policy on when an inmate should be separated from another inmate, and how that separation should be effectuated. The policy states that one inmate should be separated from another when a "crime victim [of one inmate]... is closely related to another inmate, i.e. parent, sibling, spouse or person of (sic) loco parentis." The policy states that any Department of Corrections "staff" member may request a separation by filling out a separation request form, known as a **DC-186**. The policy also states that staff "will verify" any claim by an inmate that he has enemies in the system from which he should be separated. Any staff member, including all counselors and records specialists assigned to an inmate, may submit a DC-186 if a separation is called for under the Department of Correction's policies.

Once a **DC-186** is submitted, the information from it is entered into the inmate's computerized "Separation Listing." The Separation Listing is the only information that correctional officers have access to when an inmate transfers into an institution temporarily; the officers do not have access to the inmate's entire institutional file unless he is permanently **transferred to their institution.**

C. Reception

Upon entry into Pennsylvania's correctional system, each inmate is initially processed through what is called "reception" screening. During reception, an inmate's first contact with the system is an interview with a Records Specialist in the Assessment Unit. Records Specialists gather information about the new inmate, including whether the inmate has any enemies in the system from which he should be separated.

During reception, Records Specialists are to assume that the inmate is telling the truth about the status of his enemies and record any information about the inmate's enemies on Forms DC-2A and **DC-14**. Those forms are included in the inmate's institutional file.

Jones went through initial reception at the State Correctional Institution in Graterford, Pennsylvania ("SCI-Graterford"). The Assessment Unit Records Specialist in charge of his reception was defendant Joseph Kriczky. At that interview, Jones told Kriczky that he needed to be separated from Palmer and that Palmer had killed his brother. Kriczky checked for Palmer on the Department of Corrections' computerized database and found him there; he confirmed with Jones that the **Patrick Palmer he found was** in fact the **same** person Jones feared. Kriczky then told Jones that Palmer was incarcerated at the State

Correctional Institution at Greensburg, Pennsylvania (SCI-Greensburg). The plaintiff assumed that Kriczky took appropriate measures to ensure that he would be separated from Palmer at all times.

Kriczky knew that Palmer was Jones' known enemy because he listed Palmer as his enemy on the DC-2A and **DC-14** forms he filled out. Kriczky did not submit a **DC-186** separation request to keep Jones separated from Palmer. If he had done so, Jones' computerized Separation Listing would have reflected the need to separate Jones from Palmer. Then, if the corrections officers at the facilities to which Jones was transferred checked his listing as they should, Jones would not have come into contact with Palmer.

Jones remained at SCI-Graterford for approximately ten days, and was then transferred to the State Correctional Institution at Camp Hill, Pennsylvania (SCI-Camp Hill) for "classification."

D. Classification

After reception, an inmate is transferred to another facility, typically SCI-Camp Hill, for classification, a process by which an inmate **is** classified and transferred to safe housing. This process is conducted by Classification Counselors.

Classification Counselors assess, among other things, potential threats to inmates' safety and request separations as needed. Because classification can take several weeks, each inmate is assigned a Block Counselor with whom the inmate may discuss any concerns or problems. Block Counselors, like other staff, are authorized to submit separation requests.

When Jones first arrived at SCI-Camp Hill for classification, a correctional officer asked him whether he had any known enemies there. Because Kriczky told him that Palmer was at SCI-Greensburg, Jones replied that he did not, and signed a form that he believed applied only to SCI-Camp Hill. The Block Counselor assigned to Jones was defendant William Chancellor.

On April 5, 1999, Jones learned that he had been classified to the State Correctional Institution at Greene, Pennsylvania ("SCI-Greene"). During his stay at SCI-Camp Hill, Jones heard a rumor that Cacho and Robert Hall, Palmer's cousin, were incarcerated at SCI-Greene. He was unsure if SCI-Greene and SCI-Greensburg were the same place, and feared that he was going to be housed with Palmer, Hall or Cacho.

Jones immediately sent Chancellor a written separation request dated April 5, 1999, explaining why he could not be placed with Palmer, **Hall or** Cacho. Jones stated in the request that Palmer had killed his brother Marcus; that Cacho had

attempted to stab him; and that Palmer, Cacho and Hall all wanted to hurt him. He stated that placement in the same prison as Palmer would put him "in great danger for injury." He asked Chancellor: "Please help, if possible."

Chancellor admitted that this letter listed Palmer as an enemy and was a request to be separated from him. He also admitted that on the face of the request Jones should have been separated from Palmer. He also admitted that, if true, the plaintiff's request was a serious one. Although Chancellor received many request slips each day, he would receive one as dire as the one from Jones only rarely - perhaps one a month, at most. Requests of this gravity were "pretty rare."

Chancellor responded to Jones' letter by instructing Jones to write to his Classification Counselor and "tell him why you lied when you said you had no enemies" at the initial interview at SCI-Camp Hill. Chancellor's response also said, "Maybe [your Classification Counselor will] send you elsewhere. If not, go to SCI-Greene's staff if you see your enemies there." It ended with a rhetorical question to Jones: "When you get out of prison, where will you live so as not to run into other old enemies?" Chancellor testified that he responded to Jones' request this way in order to instill in Jones an ethic of taking responsibility for his actions.

Realizing that his separation request had not been successful, the plaintiff drafted a second request slip as soon as he received Chancellor's response on **April 7, 1999**. It again set forth that Palmer killed the plaintiff's brother and that the plaintiff feared Palmer, Cacho and Hall. This request states that Palmer and his friends were "responsible for the death of my brother" and "have nothing to lose." Chancellor read this request as justifying a separation from all three people named - Hall, Cacho and Palmer.

Chancellor's response to this second request stated: "I've already talked with Mr. Tabor about you! You had at least 3 chances during the classification process to speak up about any enemies, any where." Chancellor never filled out a DC-186 separation request for Jones.

E. Plaintiff's Contact With His Classification Counselor

A Classification Counselor reviews an inmate's background information, rap sheets, pre-sentence reports and other information and then he interviews the inmate. The Classification Counselor usually reviews three or four forms generated during reception, and in no case more than a dozen forms. From this information the Classification Counselor creates a "Classification Summary" which is placed in the

inmate's institutional file.

The Classification Counselor assigned to Jones was defendant Timothy Tabor. On April 7, 1999, Jones sent a third written separation request, this time to Tabor. It stated that Palmer killed Jones's brother and that Palmer, along with Cacho and Hall, tried to attack and kill him. Jones' request to Tabor stated:

Mr. Tabor, Patrick Palmer the person who is responsible for the death of my brother Marcus Jones, has a cousin and a friend at Greene County. Robert Hall is his cousin and Jose Cacho is his best friend. It should also be noted that these individuals tried to attack **me**. ... Mr. Tabor they tired (sic) to kill me then and now Jose, tried once to stab me... . Next time I might not be as lucky.

Exhibit 16, Plaintiff's Motion for Summary Judgment (all exhibits to the plaintiff's motion will be referred to as Ex. __). In this request Jones also asks for protection and explains that when he was asked about enemies during **the** classification process, he was under the impression the counselors were referring only to SCI-Camp Hill. Id.

After reading this request, Tabor spoke to Jones about it. Tabor then filed a **DC-186** requesting that Jones **be** separated from Hall and Cacho, but not Palmer. Tabor informed Jones that **he had been reclassified to the State** Correctional Institution at Pittsburgh, Pennsylvania ("SCI-Pittsburgh").

Tabor had classified Jones' brother Lance Grant about a month before classifying Jones. In doing so, Tabor filed a DC-186 requesting that Grant be separated from Palmer. This request stated that "Mr. Palmer was involved in a shoot-out with Mr. Grant and two of his brothers, Marcus Jones and James Jones, DW0656... . During the melee Mr. Palmer accidentally shot Marcus Jones, who is the brother of Mr. Grant and James Jones." Ex. 18. Tabor testified that, based on the information in this separation request for Grant, he could have filed a **DC-186** to separate Jones from Palmer even if Jones had not requested one. Ex. 3. at 20.

F. Palmer's Attack on the Plaintiff

Although Jones had been reclassified to SCI-Pittsburgh, Jones was temporarily transferred back to SCI-Graterford on April 23, 1999 to be arraigned in the **U.S.** District Court for the Eastern District of Pennsylvania.

Unbeknownst to Jones, Palmer was also transferred to SCI-Graterford at that time for arraignment. Jones was placed in the same cellblock as Palmer. Shortly after being placed on the cellblock, Jones was attacked by Palmer. Two correctional officers took control of Palmer.

11. Plaintiff's Version of Events

The only way to ensure that Jones would be separated from Palmer was to file a formal separation request, a DC-186, so that Jones' computerized Separation Listing included information on Palmer. The computerized Separation Listing is vital to a prisoner's safety because, as a practical matter, it is the only information available to a receiving institution about an inmate's enemies when an inmate is temporarily transferred there. Ex. 8 at 24-25, 29-30, 32; Ex. 9 at 35; Tr. 10-11.

In the Pennsylvania Department of Corrections system, the only thing protecting a temporarily transferred inmate - which Jones was during his second visit to SCI-Graterford - from being assaulted by a known enemy is the Separations Listing. The defendants knew of the risk Palmer presented to him and they had the responsibility to file a DC-186 to protect Jones from Palmer.

When Jones told Kriczky about needing to be separated from Palmer, Kriczky responded by telling Jones that (1) Palmer was at SCI-Greensburg and (2) he would never come into contact with Palmer. Kriczky failed to submit a separation request although (1) he knew that Jones considered Palmer an enemy because Palmer killed Jones' brother and had tried to kill Jones and (2) he reassured Jones that he would never come into contact with Palmer again.

Chancellor understood (1) that Jones was making a request to be separated from Palmer, Hall and Cacho; and (2) that the plaintiff faced a serious risk if the facts he stated in his request were true. Chancellor did not file a **DC-186** separation request to ensure that Jones was not placed with Palmer although he knew of the potential danger facing Jones. Ex. 14; Ex. 2 at 46, Defendants' Motion for Summary Judgment.

Tabor did file a separation request to keep Jones away from Cacho and Hall, but failed to order Jones' separation from Palmer despite having and reviewing information from these sources that Palmer too presented a threat to Jones. First, such information **was** available **to** Tabor in Jones's institutional file, a three- or four-document file to which Tabor had access. Even a cursory review of those documents would have revealed the DC-2A and the DC-14 that Kriczky had generated. The DC-14 read: "Do you have any enemies at any SCI- or any relatives that **work** in an **SCI-?** Patrick Palmer DK6809." The DC-2A generated by Kriczky stated: "Keep inmate separated from DK6809 [Palmer's inmate number]."

Tabor stated that he reviews an inmate's institutional file every time he makes a classification decision. Ex. 3 at 24. Because he made such a decision for Jones, Tabor must have reviewed Jones' institutional file. Although the file would have

also contained the form Jones executed upon intake at SCI-Camp Hill which indicated that he had no enemies, Jones clearly explained to Tabor that he had been told that the form applied only to SCI-Camp Hill. Ex. 15; Ex. 16; Ex. 1 ¶ 12.

Second, Tabor had access to the pre-sentence investigation report from the plaintiff's conviction in state court. The pre-sentence report quotes Jones as saying: "Patrick shot my brother, but it sure wasn't any accident like the police said... ." Tabor incorporated this quote into his Classification Summary for Jones. Ex. 17 at 4. To **do so**, Tabor must have reviewed the pre-sentence report and learned that Jones believed that Palmer killed his brother Marcus.

Tabor's third source of information was Chancellor, who spoke to Tabor about the separation request that he received from Jones on April 5. Chancellor understood Jones' separation request to him to include Palmer, Hall and Cacho; he relayed to Tabor the fact that Jones wanted to be separated from Palmer. Ex. 4 at 43; Ex. 15.

In addition, the undisputed facts are that Tabor issued a DC-186 to separate Lance Grant, Jones' brother, from Palmer about a month before, and Tabor could have requested a separation for Jones based on the information he had from issuing Grant's DC-186. Ex. 3 at 20, **41-43**; Ex. 18.

The plaintiff made one request for medical treatment after being attacked by Palmer while still at SCI-Graterford; this request did not result in treatment. At the first federal facility in which he was detained after his arraignment, he received Tylenol. The plaintiff suffered from headaches and memory loss for at least a year following the attack. Ex. 1 ¶ 14, 19-20; Ex. 1 at 21-24, 27, 31, 36, Defendants' Motion for Summary Judgment.

111. Defendants' Version of Events

During his intake interview at each institution, Jones had the opportunity to tell an officer that Palmer was his enemy. The officer could ensure his separation from Palmer at that institution, if necessary. A DC-186 separation request to put information on the computerized Separation Listing was only one way to protect Jones from Palmer. If a DC-186 was needed, then the Department of Corrections' system did not place responsibility on Records Specialist Kriczky for submitting such a request; this responsibility was assigned to Chancellor and Tabor during the classification process. Tabor did investigate Jones' need for separation from Palmer, but came to the conclusion that the situation did not warrant Jones' separation from Palmer.

During reception, it was not Kriczky's responsibility to issue a DC-186; the responsibility for entering such an order was delegated to the counselors in the classification process. Kriczky told Jones only that Palmer was being currently imprisoned at SCI-Greensburg and that Jones was going to SCI-Camp Hill next.

Chancellor did not have a mandate to issue a DC-186 separation request for Jones himself; he referred Jones to Tabor for assistance.

Tabor did not recall having a conversation with Chancellor regarding Jones' request for separation from Palmer. Ex. 3 at 63. Tabor's evaluation of Jones' written separation request to him, dated April 7, 1999, was based on the text **of** the request and a discussion he had with Jones about the request. Jones' request to Tabor can be read to state that **the** "individuals" that tried to attack Jones were Hall and Cacho, not Palmer. During their discussion about the request, Jones did not mention his concern that Palmer would attack him.

Tabor thus understood that Jones was concerned that Cacho and Hall would attack him, not Palmer. Tabor believed that Palmer had accidentally shot Jones' brother during the commission of the crime; **as** a result, **he** was not concerned about Palmer harming Jones.

Upon his arrival at SCI-Graterford on April 23, 1999, Jones was interviewed by Officer Denise Ansari and another individual. He did not tell either person that he needed to be separated from Palmer. After the interview, he was assigned to a cellblock. Less than five minutes after entering this cellblock, Palmer attacked Jones.

Jones did not request medical treatment immediately after he was attacked. He did so later when officers came to his cell. He was informed that someone would come by to take him to the infirmary, but no one ever came. On April 29, 1999, Jones appeared in federal court in Philadelphia; he did not receive any medical treatment there. Ex. 1 at 15-16, 19, 25, 36, Defendants' Motion for Summary Judgment; Tr. 40-41.

IV. Discussion

Under 42 U.S.C. § 1983, the plaintiff must show that the defendants, acting under color of state law, deprived him of 'rights, privileges and immunities secured by the Constitution or laws of the United States.'" Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327 (1986). The defendants do not contest that they were acting under the color of state law. The issue is whether the defendants deprived the plaintiff of his rights under the

Constitution or the laws of the United States.

A. Was There a Constitutional Violation?

The plaintiff claims that his rights under the Eighth and Fourteenth Amendments were violated. The Eighth Amendment, which applies to the states through the Due Process Clause of the Fourteenth Amendment, protects persons convicted of crimes from the infliction of cruel and unusual punishment. **U.S. Const. Amend. VIII.** Eighth Amendment protections extend to conditions of confinement and include protection from violence at the hands of other prisoners. Farmer v. Brennan, **511 U.S. 825, 832** (1994). Prison officials must protect prisoners from the violence of other prisoners because "[b]eing violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society.'" Id. at **834** (quoting Rhodes v. Chapman, **452 U.S. 337, 347** (1981)).

The Fourteenth Amendment affords inmates a constitutionally protected liberty interest to be free from unjustified intrusions on personal safety. See Davidson v. O'Lone, **752 F.2d 817, 821** (3d Cir. **1984**), aff'd sub nom. Davidson v. Cannon, **474 U.S. 344** (1986). "Because the inmate is not free to **leave the confines which [he] is forced to share** with other prisoners, the state bears the responsibility for the inmate's

safety." Id. That responsibility extends to protection from other inmates. Liability for a Fourteenth Amendment violation, pursuant to § 1983, may be imposed where the prison officials act with reckless indifference or callous disregard to the safety of the prisoner. Id. at 828. The plaintiff argues, and the defendants do not dispute, that this standard is tantamount to that for proving an Eighth Amendment violation.

To prevail on an Eighth or Fourteenth Amendment claim, the plaintiff must prove two things. First, he must show that he was "incarcerated under conditions posing a substantial risk of serious harm." Farmer, 511 U.S. at 834. Second, he must prove that the defendants acted with sufficiently culpable states of mind, because "only the unnecessary ... infliction of pain implicates the Eighth Amendment," Id. at 834 (quoting Wilson v. Seiter, 501 U.S. 294, 297 (1991)).¹

¹ The defendants argue that the plaintiff cannot prove a constitutional violation because the plaintiff's injuries are constitutionally de minimis. See, e.g., Mabine v. Vaughn, 25 F. Supp. 2d 587, 591 (E.D. Pa. 1998); Barber v. Grow, 929 F. Supp. 820, 821 (E.D. Pa. 1996). The plaintiff's injuries are in dispute. The Court, therefore, cannot determine on summary judgment whether the injuries were de minimis. The Court, therefore, will not decide here whether de minimis injuries can never amount to a constitutional violation.

1. Was the Plaintiff Exposed to a Substantial Risk of Serious Harm?

The determination of whether a substantial risk of serious harm existed is an objective one. See Farmer, 511 U.S. at 834; Hamilton, 117 F.3d at 746-47.

The defendants acknowledge that Jones' brother, Marcus, was shot and killed by Palmer, and that the plaintiff had been previously shot at and assaulted by Palmer and his accomplices. They also concede that inmates are frequently transferred from one prison to another, and that the Separation Listing **is** the system developed by the correctional system to separate prisoners who pose a risk of harm to other prisoners.

The Department of Corrections' Classification Policy 11.2.1-2 recognizes the potential for harm between inmates when one inmate's crime victim is another inmate's sibling and calls for such inmates to be separated. The policy allows staff to request a separation that will provide for inmates' separation even upon temporary transfers, and a mandate for staff to verify any claim by an inmate that he has enemies in the system from which he should be separated.

In view of these undisputed facts, a reasonable fact finder could **find** that the plaintiff was exposed to a substantial risk of serious harm.

2. Did the Defendants Act with Deliberate Indifference?

The plaintiff must also prove that the defendants acted with "deliberate indifference" to the substantial risk of serious harm. Farmer, 511 U.S. at 828. A showing **of** deliberate indifference requires proof that an official "was subjectively aware **of** the risk" and disregarded the risk. Id. at 834. Subjective awareness requires that an official "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. at 837. An official who actually knows of a substantial risk **of** serious harm and responds reasonably to it cannot be held liable for the risk, even if harm was not averted. Id. at 844.

Based on the undisputed facts, **a** reasonable fact finder could find that Officers Kriczky and Chancellor were deliberately indifferent to the risk that Palmer would attack the plaintiff. They both knew that Palmer had attacked the plaintiff in the past, that Palmer had **killed** the plaintiff's brother, and that Palmer was **also** in the correctional system. This result is even clearer under the plaintiff's version of the facts.

If one considers only the undisputed facts, the case is more difficult for the plaintiff with respect to Officer Tabor.

The document that the plaintiff sent to Officer Tabor was not clear that he was asking to be separated from Palmer as well as Cachó and Hall. Under the plaintiff's version of the facts, however, a reasonable fact finder could find that Officer Tabor was deliberately indifferent to the risk that Palmer would attack the plaintiff. The Court, therefore, finds that a reasonable fact finder could find a constitutional violation by the defendants.

Because the plaintiff has also moved for summary judgment as to liability, the Court must also ask whether a reasonable fact finder could find that there was no constitutional violation. **If** not, the Court must find for the plaintiff on the question of a constitutional violation. The answer with respect to Officer Tabor is yes. Whether Officer Tabor knew that the plaintiff needed to be separated from Palmer is in dispute. It is a closer question as to Officers Kriczky and Chancellor who clearly knew that Palmer was **in** the system and had attacked the plaintiff in the past. The statements made by Officer Chancellor especially reflect an indifference to the plaintiff's situation. Having said that, however, the Court is reluctant to take from the jury the question of the officers' state of mind in this situation. These decisions are better left to the jury after seeing the defendants and hearing from them why

they did not put in a separation request.

B. Do the Defendants Have Qualified Immunity?

Qualified immunity shields government officials performing discretionary functions from liability. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Government officials can claim qualified immunity insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Id.

To determine if the defendants are entitled to qualified immunity, this Court must determine (1) whether the facts, taken in the light most favorable to the plaintiff, show that the defendant officials' conduct violated a constitutional right and (2), if such a right has been violated, whether that right was "clearly established." Saucier v. Katz, 533 U.S. 194, 200 (2001). For a constitutional right to be clearly

² The plaintiff argues that the defendants waived qualified immunity as a defense because they failed to raise this affirmative defense in their motion to dismiss or answer, as required by Fed. R. Civ. P. 8(c). The Third Circuit has held that where the plaintiff was not prejudiced by a failure to raise qualified immunity in the initial response to the complaint, then there was no waiver. Eddy v. Virgin Island Water and Power Authority, 256 F.3d 204, 209 (3d Cir. 2001) (citations omitted). The plaintiff does not argue that he was prejudiced by the defendants' failure to raise qualified immunity earlier, so the defendants did not waive this defense.

established, its contours must **be** sufficiently clear that a reasonable official would understand that his actions violate that right in light **of** clearly established legal rules at the time the action was taken. Anderson v. Creighton, 483 U.S. 635, 638 (1987); Harlow, 457 U.S. at 818.

The "clearly established" standard puts officials on notice that their actions violate a right even without a precedent that is factually identical; "there need only be some but not precise factual correspondence between relevant precedents and the conduct at issue." See Larsen v. Senate of Pennsylvania, 154 F.3d 82, 87 (3d Cir. 1998), cert. denied, 525 U.S. 1144 (1999) (citations omitted). If officials could not be on notice **of** a violation without a precedent directly on point, the limits on immunity would be undermined; officials could violate rights without liability unless precedent had established that a factually identical situation was a violation. See Assaf v. Fields, 178 F.3d 170, 177 (3d Cir. 1999).

There was sufficient guidance in the caselaw to put the defendants on notice that their alleged conduct violated Jones' rights at the time the relevant events occurred. It had been established that government officials have a duty to protect prisoners from attacks by other prisoners under the Eighth Amendment. See Farmer v. Brennan, 511 U.S. 825, 828 (1994). In

1994, several years before the events giving rise to the plaintiff's claims, Farmer put officials on notice specifically that being deliberately indifferent to a substantial risk of serious harm to an inmate would violate the Eighth Amendment. 511 U.S. at 828.

It had also been long established that government officials have a duty to ensure prisoners' substantive due process right to **be** free from bodily harm under the Fourteenth Amendment because prisoners are in state custody. See Davidson v. O'Lone, 752 F.2d 817, 821 (3d Cir. 1984), aff'd sub nom. Davidson v. Cannon, 474 U.S. 344 (1986); see also Curtis v. Everette, 489 F.2d 516, 518-21 (3d Cir. 1973) (holding that prison officials' alleged failure to protect an inmate from a known risk of harm presented by other inmates is actionable under 42 U.S.C. § 1983 for violating the due process clause of the Fourteenth Amendment). Davidson put officials on notice in 1984 that where they act with reckless indifference to the safety of the prisoner, that they violate a constitutional right.

An appropriate order follows.

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

JAMES ALLEN JONES,
Plaintiff

v.

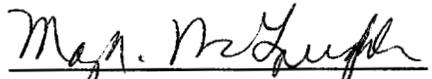
NO. 00-CV-1622

TIMOTHY A. TABOR, WILLIAM J.
CHANCELLOR, and JOSEPH KRICZKY,
of the Pennsylvania Department of
Corrections, all in their individual
and official capacities,
Defendants

ORDER

AND NOW, this 11th day of April, 2003, upon
consideration of the Plaintiff's Motion for Partial Summary
Judgment (Docket #32) and the Defendants' Response, as well as
the Defendants' Motion for Summary Judgment (Docket #31), the
Plaintiff's Response and the Defendants' Reply, and after a
hearing on both motions on January 29, 2003, it is hereby Ordered
that said motions are Denied for the reasons stated in a
memorandum of today's date.

BY THE COURT:


MARY A. MCLAUGHLIN, J.