

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

HENRY D. NAGEL, JR.,	:	CIVIL ACTION
Plaintiff	:	
v.	:	
	:	NO. 04-2266
LT. GREGORY THOMAS, et al,	:	
Defendants	:	

MEMORANDUM

Baylson, J.

January 31, 2005

I. Introduction

Presently before this Court is a Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, collectively filed by the Defendants. For the reasons stated below, the Motion for Summary Judgment will be granted.

II. Jurisdiction and Legal Standard

This court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

When deciding a Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, a court will grant the motion “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, 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.” Fed. R.Civ.P. 56(c). While all facts and inferences must be viewed in the light most favorable to the non-movant, Lujan v. Nat’l Wildlife Fed’n, 497 U.S. 871, 888 (1990), the non-movant must supply sufficient evidence, and not mere allegations, for a reasonable jury to find in its favor. Olson v. General Electric Astrospace, 101 F.3d 947, 951 (3d Cir. 1996).

III. Procedural History

Plaintiff, Henry D. Nagel, Jr., appearing pro se, filed a Complaint on August 5, 2004 against Lt. Gregory Thomas, Warden Dale Meisel, Deputy Warden Nancy Afflerbach, and Deputy Warden Security James Bloom alleging that Defendants violated Plaintiff's constitutional rights while he was incarcerated at Lehigh County Prison. Plaintiff contends that his constitutional rights were violated when Defendants removed him from the Work Release Program without following proper prison procedure. Defendants filed an answer on September 10, 2004. On October 29, 2004, Defendants collectively filed a Motion for Summary Judgment. Plaintiff filed a Response on December 20, 2004. On December 29, 2004, this Court issued an Order directing Defendants to file a Supplemental Memorandum of Law responding to Plaintiff's due process claims. Defendants filed a Supplemental Response on January 17, 2005.

IV. Factual Background

Plaintiff was incarcerated at the Lehigh County Prison since March 28, 2003. On January 12, 2004, Plaintiff entered the Work Release Program at the Men's Community Correction Center run by the prison. Before entering the program, Plaintiff agreed to testing for drug and/or alcohol consumption, and acknowledged that consumption of any drugs and/or alcohol would be the basis for immediate removal from the Work Release Program. See Def's Exhibit A: Work Release Agreement at ¶ 4. On January 17, 2004, Plaintiff tested positive for marijuana (a controlled substance), was cited for misconduct, and was removed from the Work Release Program. Plaintiff was returned to the main prison and placed in general population. Plaintiff was found guilty at a misconduct hearing. Plaintiff's appeal from the misconduct charge was denied on May 28, 2004. Plaintiff then commenced this action under 42 U.S.C. § 1983 against

Defendants. Plaintiff seeks compensatory damages for the period of time he remained in general population.

V. Discussion

Defendants argue that they are entitled to summary judgment because there is insufficient evidence that any named Defendant violated Plaintiff's rights. (Def's Motion at 2). Specifically, Defendants argue that Plaintiff's Due Process claims must fail because 1) Plaintiff did not have a protected liberty interest in remaining in the Work Release Program; and 2) Defendants are entitled to qualified immunity.

A. Liberty Interest

Under 42 U.S.C. § 1983, a plaintiff may bring suit against any person who, acting under the color of law, deprived him or her of a right secured by the Constitution or other law. See 42 U.S.C. § 1983. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that a state may not deprive any person of life, liberty, or property without due process of law. In order to prevail on a due process claim, a plaintiff must first demonstrate the existence of a protected liberty interest. A protected liberty interest may arise from either of two sources, the Due Process clause itself or the laws of a state. Asquith v. Department of Corrections, 186 F.3d 407, 409 (3d Cir. 1999) (affirming district court grant of summary judgment in favor of defendant and holding that defendant Department of Corrections did not violate prisoner's due process rights when it returned him to prison without a hearing after he violated terms of his work release program).

A review of the relevant case law reveals that Plaintiff's Due Process claim must fail because he has no protected liberty interest in remaining in the Work Release Program. For

example, in McGoue v. Janecka, 211 F. Supp. 2d 627 (E.D. Pa 2002), the prisoner claimed that defendants deprived him of his due process rights by removing him from the work release program without providing him with official notice of his misconduct or an institutional hearing. The court held that the Due Process clause does not provide plaintiff with a protected liberty interest in remaining in the work release program.¹ Id. at 629. Accordingly, the court granted the defendants' Motion to Dismiss.

This court also notes that state laws or regulations can give rise to liberty interests protected by the Due Process clause. See Asquith, 186 F.3d at 411. However, courts have held that no deprivation of that interest occurs unless the actions of the state “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 484 (1995) (reversing judgment of court of appeals that reversed summary judgment in favor of state). The court must measure the hardship in relation to what any inmate might expect to encounter as a result of being convicted and sentenced to a term of imprisonment. See Asquith, 186 F.3d at 412. Applying this standard, several courts have concluded that removal from a work release program does not amount to an atypical and significant hardship and thus, does not give rise to a liberty interest protected by the Due Process clause. See e.g., McGoue v. Janecka, 211 F. Supp. 2d 627, 631 (E.D. Pa 2002); Callender v. Sioux City Residential Treatment Facility, 88 F.3d 666, 669 (8th Cir. 1996); Dominique v. Weld,

¹ Other courts have reached similar conclusions regarding the participation in a work release program and the removal from participation in that program. See, e.g., Evans v. Vaughn, 1998 WL135096 at *3 (E.D. Pa. 1998) (finding no protected liberty interest when returned to general prison population after twelve years of work clearance and nine years of living outside of walled prison facility). The Third Circuit has also determined that a prisoner has no liberty interest in remaining in a halfway house. See Asquith v. Dep't of Corr., 186 F.3d 407, 411 (3d Cir. 1999).

73 F.3d 1156, 1159-60 (1st Cir. 1996).

In McGoue, the court stated:

Plaintiff also lacks a protected liberty interest derived from the laws and regulations of the Commonwealth of Pennsylvania. Revocation of his work release status did not impose anything upon plaintiff outside of the ordinary incidents of prison life. . . . Quite simply, there was nothing atypical about McGoue's conditions of imprisonment. . . . Though possibly a personal hardship, it does not impose "atypical and significant hardship on [McGoue] in relation to the ordinary incidents of prison life." Therefore, plaintiff has no protected liberty interest derived from the laws or regulations of the state.

As neither the Due Process clause nor Pennsylvania law provided McGoue with a protected liberty interest in participating in the work release program, he cannot, as a matter of law, prevail on a claim brought pursuant to 42 U.S.C. § 1983. As plaintiff had no cognizable right, the defendants did not deprive him of his due process rights.

McGoue, 211 F. Supp. 2d 627 at 631 (internal citations omitted).

Similarly, in this case, Plaintiff argues that his Due Process rights were violated when Defendant removed him from the Work Release Program without following proper prison procedures. Under McGoue, Plaintiff has no protected liberty interest in remaining in the Work Release Program and thus, his Due Process claim must fail as a matter of law. Plaintiff's "period of confinement remained consistent with the legal sentence and did not otherwise violate the Constitution." Id. Neither the Due Process clause nor Pennsylvania law provides Plaintiff with a protected liberty interest. Thus, the court will grant Defendants' Motion for Summary Judgment and dismiss Plaintiff's claim with prejudice.

Because the Plaintiff does not have a protected liberty interest giving rise to a Due

Process claim, the court need not decide whether any of the Defendants are entitled to qualified immunity.

VI. Conclusion

Because Plaintiff has no liberty interest in remaining in the Work Release Program that gives rise to a Due Process claim, Defendants are entitled to judgment as a matter of law.

Accordingly, this court will grant summary judgment in favor of the Defendants.

An appropriate Order follows.

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ORDER

AND NOW, this 31st day of January, 2005, based on the foregoing memorandum and upon consideration of Defendants' Motion for Summary Judgment (Doc. No. 16), it is hereby ORDERED that the Motion is GRANTED. Judgment is entered in favor of Defendants and against Plaintiff.

BY THE COURT:

/s/ Michael M. Baylson

Michael M. Baylson, U.S.D.J.