

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

ARNOLD KING : CIVIL ACTION
: :
v. : :
: :
MICHAEL BARONE, ISHMEAL SOLER, :
ROBERT TERRA, ROBERT BITNER, :
J. HARVEY BELL, MARTIN F. HORN, :
BESSEY WILLIAMS, JOHN MURRAY, :
BOBBY COX, RAYMOND CLYMER, :
GROMLEY, C.O., DELACUESTA, C.O., :
DONALD VAUGHN and DONALD THOMAS : NO. 95-4170

M E M O R A N D U M

WALDMAN, J.

July 31, 2003

I. BACKGROUND

This is a pro se 42 U.S.C. § 1983 civil rights action. Plaintiff, an inmate at SCI Pittsburgh asserts claims against 14 defendants for violations of his constitutional rights of access to the courts and petition for redress of grievances while he was incarcerated at the SCI Graterford.¹ Plaintiff alleges that defendants Delacuesta and Gromley confiscated his legal materials; that defendants Barone, Terra, Soler and Thomas destroyed some of those materials; that defendant Cox failed to secure plaintiff's materials; and, that at the direction of defendants Barone and Terra, defendant Thomas confiscated four letters in plaintiff's cell which he intended to mail to state legislators complaining about conditions at Graterford. Plaintiff sues the other seven defendants for failing

¹ Plaintiff was housed at Graterford from May 1991 through October 1994.

satisfactorily to address his grievance regarding the legal materials. Presently before the court is defendants' motion for summary judgment.

II. LEGAL STANDARD

In considering a motion for summary judgment, the court must determine whether the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact, and whether the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986).

Only facts that may affect the outcome of a case under applicable law are "material." All reasonable inferences from the record must be drawn in favor of the non-movant. Anderson, 477 U.S. at 256. Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)), cert. denied, 499 U.S. 921 (1991). Construing the evidence of record in a light most favorable to plaintiff, the following appears.

III. FACTS

While incarcerated at Graterford, plaintiff wrote letters to four legislators.² As best as plaintiff can recall, these letters were "basically dealing with corruption and conditions of the prison." Plaintiff avers that sometime between May 23 and 27, 1994, defendant Thomas confiscated these letters during a search of plaintiff's cell on C-Block. Plaintiff was present at the time, but did not say anything. Plaintiff had no copies and did not attempt to rewrite any of the letters.

Inmate Richard Mills avers that sometime between May 23 and 27, 1994 he witnessed defendant Thomas in plaintiff's cell reading the contents of mail which he pulled out of three or four envelopes and then placed inside his pocket. Mr. Mills also avers he told Mr. Thomas that confiscating plaintiff's mail was wrong and that Mr. Thomas then stated "I was asked to come in by Terra and Barone on my day off to obtain some important information for them, hell I'm still getting paid."

The Graterford security office maintains a log of all cell searches. There is no record of any search of plaintiff's cell between May 23 and 27, 1994. Michael A. Lorenzo, Deputy Superintendent for Internal Security at Graterford, avers that a review of the pertinent logs makes no reference to any search of

. Plaintiff is serving a life sentence for murder. He was convicted of murder in 1979. The conviction was ultimately affirmed by the Pennsylvania Supreme Court on March 11, 1983. Plaintiff is also serving a consecutive sentence for a 1990 riot conviction.

plaintiff's cell on any date between May 17 and June 5, 1994 for the 6 a.m.-2 p.m. shift or between May 15 and 30, 1994 for the 2-10 p.m. shift.

Defendant Thomas had surgery for a hernia in early May 1994. He was on sick leave from May 9, 1994 through the end of the June 4, 1994 pay period. According to his treating physician, Mr. Thomas was "totally incapacitated" during this period.

On June 1, 1994, plaintiff was charged with misconduct and transferred from his general population cell on C-Block to the Restricted Housing Unit ("RHU"). Plaintiff was not permitted to take his belongings with him, but his property was packed and stored in accordance with standard prison procedure. See generally, Inmate Disciplinary and Restricted Housing Procedures (DC-ADM 801) at ¶¶ VI.D.1, 3 & 5.

Defendant Delacuesta, a block officer, packed plaintiff's property and executed a standard inventory form listing the items that had been packed. Defendant Gromley, Mr. Delacuesta's immediate supervisor, reviewed and countersigned the completed inventory form. Defendant Delacuesta took plaintiff's belongings to the property room, but it could not be processed at that time. Mr. Delacuesta then took plaintiff's property to C-Block where he locked it in the "storeroom" (also referred to as the "supply room" or "office") overnight before returning it to the property room the next day.

There are restrictions on what RHU inmates may have in their possession, including the amount of legal material they may

have at any given time. Id. at ¶¶ VI.D.3 & 5. RHU inmates may, however, request that stored property be sent to them. Id. at ¶ VI.D.5. On July 1, 1994, plaintiff submitted to defendant Cox, the property officer, a written request for, inter alia, all of his legal materials and a copy of the inventory form prepared by Mr. Delacuesta.

On July 11, 1994, plaintiff was sent a copy of the June 1, 1994 inventory form (No. 585831) and the other items he requested, as documented on inventory form No. 584179. Plaintiff signed the latter form acknowledging receipt of the listed items which included "all" of his legal material. Plaintiff avers that nevertheless he did not receive some of his legal material.

Plaintiff avers that on September 14, 1994 defendants Terra, Barone, Soler and Thomas admitted to him that they confiscated and destroyed his legal materials.³ Three of plaintiff's fellow inmates, Jonathon Brown, Andrew Lewis and Jamal Washington, aver that they saw defendants Barone, Terra and Soler handling or reading plaintiff's legal materials. Plaintiff avers that the confiscated material included affidavits exonerating him of the murder for which he was convicted in 1979; statements showing witnesses "lied under oath to convict [him]"; police reports showing officers "fabricated the [murder] arrest"

. Plaintiff also testified that Officer Ronald Shephard told him that his legal materials had been destroyed. The basis of Officer Shephard's knowledge is not apparent, but there is no testimony or declaration by him denying the statement.

and "lied"; and, a statement of a fellow inmate exculpating plaintiff on the riot charge.

On July 20, 1994, plaintiff submitted a formal grievance complaining that when he received inventory form No. 585831 he discovered that various items, including two boxes of "legal and personal mail," were missing. Defendant Williams acknowledged receipt of the grievance which was assigned No. G26248 and referred it to defendant Cox. Mr. Cox informed Mr. Williams that the property room had received six boxes and a television on plaintiff's behalf and that he could not determine the contents of the boxes without going through them. Defendant Williams conveyed this information to plaintiff using an "Official Grievance Initial Review Response" and informed plaintiff that he would be able to check his property after being released from the RHU.⁴

By letter of February 14, 1995, plaintiff asked Superintendent Vaughn if any action had been taken on grievance No. G26248. Mr. Vaughn informed plaintiff by letter of February 22, 1995 that the grievance was considered closed due to plaintiff's failure timely to appeal. By letter of March 3, 1995 to defendant Clymer, plaintiff attempted to appeal the initial determination concerning grievance No. G26248. Defendant Bitner, Chairman of the Central Office Review Committee (CORC), then

. A copy of this initial decision concerning plaintiff's grievance (No. G26248) was sent to defendant Murray. It is uncontroverted that Mr. Murray had no further involvement with this grievance.

informed plaintiff that the CORC could not review this grievance because there was no record of any appeal to the superintendent.⁵

Plaintiff then sent to defendant Bitner a copy of defendant Vaughn's February 22, 1995 letter. Plaintiff also sent to defendant Horn, Commissioner of Corrections, a copy of his March 3, 1995 letter to Mr. Clymer and asked Mr. Horn to review the initial determination regarding grievance No. G26248. On May 4, 1995, defendant Clymer signed a letter to plaintiff on defendant Horn's behalf acknowledging receipt of plaintiff's request for final review of grievance No. G26248, informing him that a CORC panel consisting of defendants Bitner and Bell and a Department of Corrections staff attorney had recommended dismissal for failure to file a timely appeal to the superintendent and advising plaintiff that defendant Horn concurred in this recommendation.

As of June 1, 1994, plaintiff was a party in two pending litigation matters.⁶ One was King v. Lehman, et al. (E.D. Pa. Civ. No. 93-6525) which involved a challenge to deductions from plaintiff's inmate account to satisfy a restitution order for damage caused during a prison riot. Plaintiff has identified no confiscated legal material which

. Under Department of Corrections procedures, review by the appropriate institution's superintendent is a prerequisite to CORC review of an inmate grievance. See DC-ADM 804.

. Plaintiff has subsequently instituted numerous other state and federal court proceedings.

would have affected the outcome of that case.⁷ The other is King v. Supt. SCI-Camp Hill, et al. (M.D. Pa. No. 90-1412) in which plaintiff claimed he was subjected to excessive force. A jury returned a verdict in favor of the defendants. Plaintiff was represented by counsel who was aware of the alleged confiscation of plaintiff's legal materials and did not claim any prejudice or pursue the issue at all.⁸

Plaintiff had also filed a PCHA petition on July 25, 1983 in the Philadelphia Common Pleas Court challenging his murder conviction. That petition was dismissed on September 8, 1992. The dismissal was affirmed by the Superior Court on December 21, 1993. Plaintiff later filed a federal habeas corpus petition on November 29, 1995 challenging his murder conviction. See King v. White (E.D. Pa. No. 95-7451). This action was dismissed by order of September 17, 1996 for failure to exhaust state remedies.⁹ Plaintiff also filed a petition for post-conviction relief in a state court on January 23, 1995

7. That case was dismissed by order of March 21, 1995. The dismissal was affirmed on July 21, 1995.

8. Plaintiff filed a pro se Motion for Court Order seeking an order directing defendants to return plaintiff's legal material. By order of September 14, 1994, the court denied this motion because plaintiff was represented by counsel who did not sign the motion as required by Fed. R. Civ. P. 11(a). Plaintiff's counsel never refiled the motion and never raised any issue concerning the alleged confiscation of plaintiff's legal material from September 1994 through trial in December 1995.

9. It does not appear of record that plaintiff has further pursued relief in the state courts with regard to the murder conviction.

challenging his riot conviction. Plaintiff was represented by counsel, a hearing was held and the petition was dismissed on April 2, 1996. This case is now on appeal before the Pennsylvania Superior Court.

IV. DISCUSSION

A. Access to Courts Claim

Inmates have a constitutional right of meaningful access to the courts. Bounds v. Smith, 430 U.S. 817, 823 (1977). This right is not diminished when a prisoner is housed in a segregated unit. See Valentine v. Beyer, 850 F.2d 951, 955 (3d Cir. 1988); Para-Professional Law Clinic v. Kane, 656 F. Supp. 1099, 1104 (E.D. Pa.), aff'd, 835 F.2d 285 (3d Cir. 1987), cert. denied, 485 U.S. 993 (1988). A denial of access claim may be premised on the confiscation or destruction of an inmate's legal materials. See, e.g., Zilich v. Lucht, 981 F.2d 694, 695-96 (3d Cir. 1992); Wright v. Newsome, 795 F.2d 964, 968 (11th Cir. 1986); Carter v. Hutto, 781 F.2d 1028, 1031-32 (4th Cir. 1986); Tyler v. "Ron" Deputy Sheriff or Jailer/Custodian of Prisoners, 574 F.2d 427, 429 (8th Cir. 1978); Hiney v. Wilson, 520 F.2d 589, 591 (2d Cir. 1975). To sustain a denial of access claim, an inmate must demonstrate "actual injury." Lewis v. Casey, 116 S. Ct. 2174, 2179 (1996). He must demonstrate that a nonfrivolous legal claim attacking his sentence or challenging the conditions of his confinement has been "frustrated" or "impeded" as a result of a defendant's confiscation of his legal material. Id. at 2181-82.

Plaintiff asserts that the confiscation of his legal materials adversely affected his challenge to his murder conviction, his appeal from his riot conviction and the two civil rights actions that were pending on June 1, 1994.

The evidence is in conflict with respect to whether any of plaintiff's legal materials were actually confiscated.

As noted, plaintiff testified that defendants Terra, Barone, Soler and Thomas admitted to confiscating and destroying his legal materials. They aver that this is untrue. Three of plaintiff's fellow inmates aver that they saw plaintiff's legal materials being handled or read by defendants Barone, Terra and Soler.

As noted, plaintiff avers that the confiscated materials included affidavits exonerating him of murder; statements showing that certain individuals gave false testimony against him; police reports showing the officers "fabricated the arrest" for murder and "lied"; and, the statement of a fellow inmate that plaintiff did not participate in the prison riot. Any such documents could not possibly have affected the outcome of his civil excessive force claim or a federal habeas action dismissed for failure to exhaust state remedies. It is conceivable, however, that the confiscation of such documents may

have impeded plaintiff's pursuit of post-conviction relief in the state court.¹⁰

Plaintiff acknowledged during his deposition that his claims against defendants Bitner, Bell, Horn, Williams, Murray, Clymer and Vaughn are based solely upon their failure to act favorably upon his grievance regarding his legal materials. The failure of prison officials to act favorably on an inmate's grievance is not a constitutional violation. See Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994), cert. denied, 115 S. Ct. 1371 (1995); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.), cert. denied, 488 U.S. 898 (1988); McGuire v. Forr, 1996 WL 131130, *1 n.1 (E.D. Pa. Mar. 21, 1996); Pryor-El v. Kelly, 892 F. Supp. 261, 275 (D.D.C. 1995); Brown v. Dodson, 863 F. Supp. 284, 285 (W.D. Va. 1994); Orrs v. Cornings 1993 WL 418361, *2 (E.D. Pa. Oct. 13, 1993); Flanagan v. Shively, 783 F. Supp. 922, 931 (M.D. Pa. 1992), aff'd, 980 F.2d 722 (3d Cir.), cert. denied, 114 S. Ct. 95 (1993).

10. These materials suggest the availability of exculpatory evidence which could have changed the outcome of plaintiff's criminal proceedings. While not clear, it may be inferred that except perhaps for the police reports such evidence had only subsequently become available. The material could have provided the necessary record support for a PCRA petition and its confiscation could have "frustrated" or "impeded" plaintiff's ability effectively to present such a petition. See Pa. C.S.A. § 9543(a)(2); Com. v. Beasley, 678 A.2d 773, 777 (Pa. 1996) (to present cognizable subsequent post-conviction relief request petitioner must make prima facie showing of innocence or trial sufficiently unfair as to amount to miscarriage of justice).

2. Mail Claim

The confiscation of or refusal to process an inmate's outgoing mail, in the absence of a showing that such action is necessary to further a substantial governmental interest unrelated to suppression of speech, violates a prisoner's First Amendment rights. See Thornburgh v. Abbott, 490 U.S. 401, 414 (1989); Procunier v. Martinez, 416 U.S. 319, 322 (1972); Treff v. Galetka, 74 F.3d 191, 195 (10th Cir. 1996); Leonard v. Nix, 55 F.3d 370, 374 (8th Cir. 1995).

The evidence regarding this claim as well is conflicting.

As noted, plaintiff testified that during a cell search sometime between May 23 and 27, 1994 defendant Thomas confiscated letters destined for state legislators. This is corroborated by the declaration of inmate Richard Mills who avers that sometime between May 23 and 27, 1994 he witnessed defendant Thomas in plaintiff's cell reading and then confiscating his mail.

Mr. Thomas avers that he could not have searched plaintiff's cell or confiscated any letters therein between May 23 and 27, 1994 as he was recovering from surgery at that time and did not work or come to SCI Graterford for any reason. Attendance records reflect that Mr. Thomas was out on sick leave for the entire May 22-June 4, 1994 pay period. Also as noted, internal security logs contain no reference to any search of plaintiff's cell during the pertinent period.

Mr. Terra and Mr. Barone aver in answers to interrogatories that they did not confiscate any letters from plaintiff's cell or refuse to process any of plaintiff's outgoing mail. There is, however, no specific denial by them of directing Mr. Thomas to do so. As noted, inmate Richard Mills avers that in the course of reading and confiscating letters from plaintiff's cell Mr. Thomas stated he had been sent to obtain "important information" by defendants Terra and Barone.¹¹

V. CONCLUSION

It is axiomatic that a court may not assess credibility or weigh the evidence in deciding a motion for summary judgment. There is conflicting evidence which creates a genuine issue of material fact as to whether Mr. Thomas was in plaintiff's cell at the time alleged and confiscated outgoing letters addressed to state legislators. Similarly, there is conflicting evidence which creates a genuine issue of material fact regarding the

11. The precise nature of supervisory control defendants Terra and Barone had over defendant Thomas is not altogether clear. It does appear, however, that as superior officers in the security unit Messrs. Terra and Barone had supervisory authority over Mr. Thomas as a COI assigned to security. Conducting cell searches for contraband clearly appears to have been within the scope of Mr. Thomas's official duties. Thus, it appears that the purported statement of defendant Thomas regarding instructions from defendants Terra and Barone may be admissible against the latter under Fed. R. Evid. 801(d)(2)(D). See Lippay v. Christos, 996 F.2d 1490, 1498 (3d Cir. 1993); Zaken v. Boerer, 964 F.2d 1319, 1322-23 (2d Cir.), cert. denied, 113 S. Ct. 467 (1992); Crawford v. Garnier, 719 F.2d 1317, 1324-25 (7th Cir. 1983); Nekolny v. Painter, 653 F.2d 1164, 1171-72 (7th Cir. 1981); Coleman v. Wilson, 912 F. Supp. 1282, 1295 (E.D. Cal. 1995); Washington v. Vogel, 880 F. Supp. 1534, 1537 (M.D. Fla. 1995); McCann v. Phillips, 864 F. Supp. 330, 334 & n.7 (S.D.N.Y. 1994); Gannon v. Daley, 561 F. Supp. 1377, 1382 & n.15 (N.D. Ill. 1983).

confiscation of plaintiff's legal materials and whether he sustained an actual injury from such confiscation, if it occurred. Accordingly, the motion for summary judgment must be denied as to defendants Thomas, Terra, Barone and Soler.

Plaintiff, however, has failed to present evidence from which one reasonably could find that any of the other defendants violated his constitutional rights. Accordingly, summary judgment will be granted to these defendants.

An appropriate order will be entered.

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O R D E R

AND NOW, this day of May, 1997, upon
consideration of defendants' Motion for Summary Judgment and
plaintiff's response thereto, consistent with the accompanying
memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in
part in that **JUDGMENT is ENTERED** in the above action for
defendants Bitner, Bell, Horn, Williams, Murray, Cox, Clymer,
Gromley, Delacuesta and Vaughn, and said Motion is otherwise
DENIED.

BY THE COURT:

JAY C. WALDMAN, J.