

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

DONALD R. HULL	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
CAROL DOTTER,	:	NO. 96-3087
MARTIN DRAGOVICH,	:	
MARVA CERULLO, and	:	
JEROME FRYZEL	:	
Defendants	:	

MEMORANDUM

Yohn, J.

June , 1997

Donald R. Hull brought a 42 U.S.C. § 1983 claim against prison officials alleging violation of his Eighth Amendment rights. The court granted judgment to defendants on the ground that the claims alleged by Hull do not constitute objectively serious deprivations of basic human needs in violation of the Eighth Amendment prohibition of cruel and unusual punishment. Two days prior to the court's order granting judgment, Hull filed a motion for a temporary restraining order and preliminary injunction, alleging harassment by defendants and their agents in retaliation for Hull's lawsuit. The court was not yet aware of this motion when it granted summary judgment to defendants. For the reasons that follow, Hull's motion will be denied.

On April 19, 1996, proceeding in forma pauperis, Hull filed suit against Carol Dotter, Martin Dragovich, Marva Cerullo and Jerome Fryzel, all officials at the State Correctional Institution at Mahanoy (SCI Mahanoy). Hull alleged that defendants permitted Hull to be housed for a short period of time

in a cell in which poor air quality caused Hull to suffer headaches, stomach cramps and nose bleeds, and that defendants were deliberately indifferent to his inadequate conditions of confinement and serious medical needs. On November 27, 1996, defendants filed a motion for summary judgment on all claims.

The filing deadline for Hull's reply to defendants' summary judgment motion was extended by a series of events and motions. On January 3, 1997, the court ordered defendants to comply with Hull's previous discovery request, and extended the deadline for Hull to reply to defendants' summary judgment motion to February 16, 1997. On January 27, 1997, Hull filed a motion for a restraining order and for a prison transfer to the State Correctional Institution at Graterford (SCI Graterford). Hull alleged that prison officials had denied him access to the prison law library and engaged in acts of harassment, all in retaliation for Hull's suit. Four days later, Hull moved to dismiss defendants' summary judgment motion on the ground that defendants had failed to comply with the court's January 3 order compelling discovery. On February 11, 1997, the court further ordered defendants to comply with the discovery order, and extended to February 26, 1997 the deadline for Hull to respond to defendants' summary judgment motion. The defendants continued to ignore the court's January 3 order and, once more, the court extended Hull's reply deadline. Finally, on March 28, 1997, the court conducted a hearing on Hull's motion for a restraining order and prison transfer, and defendants' non-compliance with the court's

discovery order. In an order dated March 31, 1997, the court sanctioned defendants for their failure to comply with the court's prior order, ordered defendants to produce requested documents, extended Hull's summary judgment reply deadline to May 14, 1997, denied Hull's transfer request, and denied Hull's motion for a restraining order with respect to Hull's use of the law library. The court deferred hearing evidence and argument with respect to Hull's allegations of retaliation until the time of trial.

On April 22, 1997, Hull filed a motion for leave to amend his complaint to add Eighth Amendment claims against the following persons: Nurse E. Kowaluh, Dr. Brian McKeon, and Dr. B. Singh.

Subsequently, defendants complied with the court's discovery order. However, the May 14, 1997 filing deadline passed and Hull did not reply to defendants' summary judgment motion.

On June 11, 1997, the court granted defendants' motion for summary judgment. The court held that the claims alleged by Hull do not constitute objectively serious deprivations of basic human needs in violation of the Eighth Amendment. In addition, the court denied Hull's motion for leave to amend the complaint because Hull's new allegations failed to state a claim for relief.

Two days before the court granted summary judgment to defendants, Hull filed a second motion for a preliminary

injunction and restraining order pursuant to Fed. R. Civ. P. 65(b). Hull claims that he has been subject to the following acts of harassment by defendants, their agents and subordinates in retaliation for his lawsuit: (1) prison staff conducted a search of Hull's cell without Hull or his cellmate being present, confiscated Hull's legal materials and pens and, later, read the contents of the legal materials; (2) prison officials gave Hull a misconduct for his attendance at the law library, wherein he was preparing and researching his case; (3) officials threatened Hull with a misconduct for making inquiries concerning the maintenance of air filters in the prison ventilation system; (4) Hull was moved to another cell within SCI Mahanoy against his wishes; and (5) while housed at the SCI Graterford, for the convenience of attending the court hearing on March 28, 1997, Hull was placed in a high security level block and was made to take a urinalysis test.

In determining whether to grant or to deny a request for a preliminary injunction, the district court must consider the following four factors: "(A) the likelihood that the applicant will prevail on the merits at final hearing; (B) the extent to which the plaintiffs are being irreparably harmed by the conduct complained of; (C) the extent to which the defendants will suffer irreparable harm if the preliminary injunction is issued; and (D) the public interest." Bill Blass, Ltd. v. Saz Corp., 751 F.2d 152, 154 (3d Cir. 1984). Only if the movant produces evidence sufficient to convince the trial judge that all

four factors favor preliminary relief should the injunction issue. ECRI v. McGraw-Hill, Inc., 809 F.2d 223, 226 (3d Cir. 1987).

The court will deny Hull's motion for an injunction and temporary restraining order because Hull has not alleged irreparable harm. The conduct alleged by Hull does not constitute cruel and unusual punishment in violation of rights protected by the Eighth Amendment. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981) (holding that conditions of confinement may constitute cruel and unusual punishment if they result "in unquestioned and serious deprivations of basic human needs . . . [which] deprive inmates of the minimal measures of life's necessities."). Similarly, Hull has not stated a denial of his constitutional right of access to the courts because Hull has not alleged that defendants' acts caused him actual injury with respect to ongoing or contemplated litigation. See Lewis v. Casey, 116 S. Ct. 2174, 2178 (1996) (holding that to establish violation of fundamental constitutional right of access to the courts, plaintiff must show widespread actual injury).

Consequently, Hull's motion for a preliminary injunction and restraining order will be denied. Similarly, the court will dismiss Hull's March 19, 1997 motion for a restraining order.

An appropriate order follows.

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JEROME FRYZEL	:	
Defendants	:	

ORDER

**AND NOW, THIS DAY OF** June, 1997, upon consideration of plaintiff's March 19, 1997 motion for a restraining order, plaintiff's June 9, 1997 motion for a preliminary injunction and restraining order, and defendants' response thereto, **IT IS ORDERED** that plaintiff's motions are **DENIED**.

**BY THE COURT:**

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William H. Yohn, Jr., Judge