

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

KENNETH SPENCER and	:	CIVIL ACTION
RAHKIA VICKERS	:	
Plaintiffs	:	
	:	
v.	:	
	:	
DONALD T. VAUGHN	:	NO. 96-2420
DAVID ISAMAYER	:	
WINIFRED YOUNG	:	
Defendants	:	
	:	

MEMORANDUM

Yohn, J.

July , 1997

Plaintiffs Kenneth Spencer (now known as James Wilkins) and Rahkia Vickers filed a pro se civil rights action against officials of the State Correctional Institution at Graterford (SCI Graterford), alleging violation of their Eighth Amendment right to be free from cruel and unusual punishment, and violation of their right of access to the courts. Plaintiffs allege that during the fall of 1995, defendants Superintendent Donald T. Vaughn and Sergeant David Isamayer acted with deliberate indifference to plaintiffs' confinement in cold, damp cells in a restrictive housing unit at SCI Graterford. Additionally, plaintiffs allege that defendant Winifred Young, the then head librarian at SCI Graterford, denied plaintiffs access to legal materials necessary for their scheduled court hearings and legal claims.

Defendants have moved for summary judgment on all claims. For the reasons that follow, defendants' motion will be granted.

**I. STANDARD OF REVIEW**

Upon motion of any party, summary judgment is to be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Where, as here, the nonmovant bears the burden of persuasion at trial, the moving party may meet its burden "by 'showing'--that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

When a court evaluates a motion for summary judgment, "the evidence of the nonmovant is to be believed." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Furthermore, "in reviewing the record, the court must give the nonmoving party the benefit of all reasonable inferences." Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3rd Cir. 1995). However, the nonmovant "must present affirmative evidence to defeat a properly supported motion for summary judgment," Anderson v. Liberty Lobby Inc., 477 U.S. at 257, and "the mere existence of a scintilla of evidence in support of the nonmovant's position will be

insufficient." Id. at 252. Indeed, "where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

**I. BACKGROUND**

The following is an account of the facts as viewed in a light most favorable to the non-moving party, the plaintiffs.

In October, 1993, plaintiffs were inmates at the State Correctional Institution at Cresson (SCI Cresson). On October 13, 1995, plaintiffs were moved to SCI Graterford where they were housed as temporary transferees on K-Unit, a restrictive housing unit, for the convenience of scheduled court appearances in Philadelphia later that month. Spencer was placed in cell number 35; Vickers initially was placed in cell number 22, and was later moved to cell number 25.

Plaintiffs allege that the physical conditions on K-Unit were constitutionally inadequate. Plaintiffs claim that the cells were damp and ice cold, that the ceilings and outside air vents leaked, and that the cells had no hot running water. Further, plaintiffs assert that they put defendants on notice of the conditions on the cell block by submitting written complaints and request slips.

Plaintiffs further allege that they submitted request slips to the prison law library for legal materials to assist

them in researching issues relating to their scheduled court appearances and legal claims, and that they received no response to their requests.

On November 3, 1995, prison authorities returned plaintiffs to SCI Cresson.

On June 3, 1996, plaintiffs filed a pro se 42 U.S.C. § 1983 complaint against defendant prison officials. Plaintiffs allege that Vaughn is liable for their injuries because as the superintendent of SCI Graterford, he had direct knowledge of K-Unit's deteriorating condition. Plaintiffs seek to hold Isamayer liable because he worked on K-Unit during plaintiffs' incarceration there and, according to plaintiffs, Isamayer ignored their complaints regarding the conditions on the unit. Finally, plaintiffs name Young as a defendant because she was head librarian at SCI Graterford during October and November, 1995.

On May 20, 1997, defendants filed the instant motion for summary judgment.

## II. DISCUSSION

### B. Eighth Amendment

Plaintiffs allege two areas in which defendants' actions constituted cruel and unusual punishment in violation of the Eighth Amendment. First, plaintiffs allege that defendants were deliberately indifferent to their confinement in damp, cold prison cells that lacked hot running water. Second, plaintiffs claim that defendants were deliberately indifferent to their resulting medical problems.

The Eighth Amendment ban on cruel and unusual punishment applies, inter alia, to a prisoner's conditions of confinement that are not formally imposed as a sentence for a crime. Helling v. McKinney, 113 S. Ct. 2475, 2480 (1993). "Prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must 'take reasonable measures to guarantee the safety of the inmates.'" Farmer v. Brennan, 114 S. Ct. 1970, 1976 (1994) (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)).

To sustain an Eighth Amendment conditions of confinement claim, an inmate must establish two elements: objective proof of inadequate conditions of confinement and subjective proof of defendants' culpable state of mind. Wilson v. Seiter, 501 U.S. 294, 297 (1991). For the first element,

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." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). "No static 'test' can exist by which courts can determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment must draw its meaning from evolving standards of decency that mark the progress of a maturing society." Id. at 346. The Eighth Amendment does not mandate comfortable prison conditions; prisons that house inmates convicted of serious crimes cannot be free of discomfort. Peterkin v. Jeffes, 855 F.2d 1021, 1027 (3d Cir. 1988). As the Supreme Court has stated, "extreme deprivations are required to make out a conditions-of-confinement claim . . . [b]ecause routine discomfort is 'part of the penalty that criminal offenders pay for their offenses against society.'" Hudson v. McMillian, 112 S. Ct. 995, 1000 (1992) (quoting Rhodes, 452 U.S. at 347). An Eighth Amendment violation occurs only where cell conditions are so inadequate as to be intolerable, shockingly substandard or dangerous. Inmates of Allegany County Jail v. Pierce, 612 F.3d 754, 757 (3d Cir. 1979).

The second element of a conditions of confinement claim requires proof that defendants had a culpable state of mind; plaintiffs must show that defendants were deliberately indifferent to their health and safety. See Farmer, 114 S. Ct. at 1977. The standard is subjective; the defendants must have

been aware of the facts from which the inference could have been drawn that a substantial risk of serious harm existed, and the defendants must have made the inference. Id. at 1979. Whether the defendants had the required knowledge is an issue of fact for the jury. Id. at 1981. Plaintiffs may prove knowledge through circumstantial evidence showing that the risk was so obvious that defendants must have known. Id. A defendant "[w]ould not escape liability if evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist." Id. at 1982 n.8. However, a defendant is not liable if he or she made reasonable efforts to remedy adverse conditions, even if such efforts failed. Id. at 1983.

Viewing the evidence of record in the light most favorable to plaintiffs, the court cannot conclude that plaintiffs have established a deprivation that society would be unwilling to tolerate. While it has been held that heating and ventilation are relevant considerations in determining whether prison conditions meet constitutional muster, see Tillery v. Owens, 907 F.2d 418, 427 (3d Cir. 1990), the court must look to the totality of the circumstances surrounding the plaintiff's confinement. See Nami v. Fauver, 82 F.3d 63, 67 (3d Cir. 1996); see also Wilson v. Seiter, 501 U.S. 294, 305 (1991) ("Some conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing effect that produces the

deprivation of a single, identifiable human need such as food, warmth, or exercise--for example, a low cell temperature at night combined with a failure to issue blankets."). Here, the plaintiffs complain that their cells were cold and leaky. However, the court notes that the time of year of the incident was late October and early November, and not the middle of winter. In addition, plaintiffs admit that they had cotton jump suits and blankets available to accommodate for the cold temperature, and Spencer concedes that some cells had heat coming from the floor. (Defend. Exhib. 4 at 26-27, 31; Exhib. 5 at 65-66.) Further, although the cells lacked hot running water, plaintiffs were provided with a hot shower every day, and the plumbing in their cells was otherwise functioning. (Defend. Exhib. 4 at 35-36.) These conditions, although not comfortable, are neither so inadequate as to be intolerable, shockingly substandard or dangerous, Inmates of Allegany County Jail, 612 F.3d at 757, nor are they an extreme deprivation that constitutes a denial of "the minimal civilized measures of life's necessities." Hudson, 503 U.S. at 9. Finally, the court notes that plaintiffs suffered no serious physical injuries as a result of their incarceration on K-Unit. While the Eighth Amendment does not require plaintiff to become deathly ill before a constitutional violation will be found, "the absence of any ailment other than colds or sore throats militates against characterizing the conditions in [plaintiff's] cell as objectively serious." Benson v. Godinez, 919 F. Supp. 285, 289

(N.D. Ill. 1996). See United States ex rel. Bracey v. Rundle, 368 F. Supp. 1186 (E.D. Pa. 1973) (cold temperature alone insufficient to constitute cruel and unusual punishment).

Similarly, plaintiffs have failed to proffer evidence of deliberate indifference to serious medical needs. In Estelle v. Gamble, 429 U.S. 97, 102-03 (1976), the Supreme Court held that the Eighth Amendment imposes an obligation on the government "to provide medical care for those whom it is punishing by incarceration." This duty is in accordance with the "'broad and idealistic concepts of dignity, civilized standards, humanity, and decency'" embodied in the Eighth Amendment. Id. at 102 (quoting Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968)). This duty applies to prison doctors in their response to prisoners' medical needs, and to prison guards in providing prisoners access to medical personnel. Id. "The standard enunciated in Estelle is two pronged: '[i]t requires deliberate indifference on the part of the prison officials and it requires prisoner's medical needs to be serious.'" Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987) (quoting West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978)).

A prisoner's medical "condition must be such that a failure to treat can be expected to lead to substantial and unnecessary suffering, injury or death." Colburn v. Upper Darby Township, 946 F.2d 1017, 1023 (3d Cir. 1991). "Moreover, the condition must be 'one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person

would easily recognize the necessity for a doctor's attention.'" Id. (quotations omitted). Deliberate indifference to medical needs is manifested where the defendant has knowledge of the prisoner's need for medical care, and intentionally refuses to provide such care. Monmouth, 834 F.2d at 346.

Here, plaintiffs allege in their complaint that their incarceration on K-Unit caused them additional harm, mental stress and psychological pains. However, plaintiffs have proffered no evidence to show that the conditions in their cells caused them a serious risk of physical or psychological harm. Further, plaintiffs present no evidence that they required and were denied access to medical services. Consequently, plaintiffs have not sustained their indifference to serious medical needs claim.

B. Access to Law Library

Plaintiffs claim that Young, Graterford's now retired head librarian, violated their right of access to the courts.

"[T]he fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828 (1977). To establish a violation of the fundamental constitutional right of access to the courts, plaintiff must show actual injury. See Lewis v. Casey, 116 S. Ct. 2174, 2178 (1996).

No actual injury exists when the state has provided inmates with attorneys, whether voluntarily appointed or retained, to assist inmates in preparing pleadings and filing for habeas and post-conviction relief petitions and civil rights actions. Peterkin v. Jeffes, 855 F.2d 1021, 1046 (3d Cir. 1988). The court finds that with respect to their then scheduled court appearances, neither plaintiff suffered actual injury as a result of Young's alleged actions. Spencer was housed at SCI Graterford for two scheduled court appearances. The first related to his petition for relief under the Pennsylvania Post Conviction Relief Act. Spencer testified at his deposition that he represented himself in that matter, although the court had appointed Joyce Ullman, Esq. to represent him. That petition was successful in that the court granted Spencer his request for an appeal. (Defend. Exhib. 4 at 15-19.) Spencer's second appearance related to new criminal charges, for which Spencer was represented by Gregory Blender, Esq., an attorney with the Philadelphia Public Defenders Associations. (Defend. Exhib. 4 at 20, 21.) Similarly, Vickers suffered no actual harm because he was represented by counsel in his pending criminal cases. (Defend. Exhib. 5 at 8, 33-35, 137.)<sup>1</sup>

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1. Vickers also contends that he requested information from the library pertaining to a parole matter. However, at his deposition, Vickers conceded that he was able to obtain the information when he returned to SCI Cresson after his temporary stay at SCI Graterford. (Defend. Exhib. 5 at 123-24.)

Plaintiffs further argue that Spencer was denied his right of access to the courts when his request to the library for a Pennsylvania Commonwealth Court habeas corpus in forma pauperis verified statement application form went unanswered. In his petition for writ of habeas corpus to the Commonwealth Court on September 15, 1995, Spencer challenged the Pennsylvania Board of Probation and Parole's (parole board) detainer pending disposition of the charges against him. Spencer stated that he was arrested on March 23, 1995 on charges of possession with intent to deliver a controlled substance and that despite making bail on the new charges, he remained incarcerated under the parole board detainer pending the disposition of the new charges. On September 27, 1995, the Commonwealth Court forwarded to Spencer notification that his petition would be dismissed if he did not file an in forma pauperis verified statement (IFP form) within 30 days pursuant to Pennsylvania Rules of Appellate Procedure 553 and 561. Spencer testified at this deposition that he did not receive the Commonwealth Court's notice until October 13, 1995, the day he was transferred to SCI Graterford. Spencer claims he requested an IFP form from the SCI Graterford library, but his request went unanswered. He returned to SCI Cresson on November 3, 1995. On November 13, 1995, the Commonwealth Court dismissed Spencer's habeas petition. Spencer subsequently requested the Commonwealth Court to reopen his habeas corpus petition on the basis of his alleged failure to receive his IFP information during the portion of the applicable time period he

was at SCI Graterford, but that request was denied by the Commonwealth Court on November 22, 1995. Spencer now argues that Young's failure to provide the requested form caused the dismissal of his habeas petition.

Defendants argues that Spencer's claim fails because there is no evidence of record that Spencer ever requested an IFP form. Defendants proffer the testimony of the assistant librarian at SCI Graterford, Doreen Thomas, who states that the library contains no record of any request from Spencer for an IFP form or any other material. (Defend. Exhib. Aff. of Doreen Thomas at 3.) However, Spencer testified at his deposition that he submitted a request for an IFP form to another inmate who was assigned to collect library requests from the inmates on K-Unit. (Defend. Exhib. 4 at 38.) Consequently, whether or not Spencer applied for an IFP form is an issue of fact that must be resolved by the fact finder at trial.

Defendants also argue that Young could not have given Spencer an IFP form even if she had received his request because the library did not have the forms. Doreen Thomas' affidavit states that while the library did supply legal forms to temporary transferees, the library does not have Commonwealth Court IFP forms, assuming such forms exists. (Defend. Exhib. Aff. Thomas at 4.)

However, states have an affirmative obligation to assure that all prisoners have meaningful access to the courts.

Bounds, 430 U.S. at 824. In assessing whether an inmate's right of access to the courts was violated,

the standard to be applied is whether the legal resources available to a prisoner will enable him to identify the legal issues he desires to present to the relevant authorities, including the courts, and to make his communications with and presentations to those authorities understood.

Abdul-Akbar v. Watson, 4 F.3d 195, 203 (3d Cir. 1993). A copy of the form requested by Spencer is reproduced in the Pennsylvania Rules of Appellate Procedure at Rule 561. That form must accompany all petitions for writ of habeas corpus filed with the Pennsylvania Commonwealth Court. See Pa. R. App. P. 552, 553. Without the IFP form, a prisoner lacks the legal resources required to make his communications and presentations to the court. Consequently, Young, as the state official responsible for the law library, is not absolved of liability merely because the library did not have the IFP forms.<sup>2</sup>

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2. Furthermore, Young is not entitled to qualified immunity. Government officials performing discretionary, non-prosecutorial functions are shielded from liability insofar as their conduct does not violate clearly established constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. at 818. "[W]hether an official protected by qualified immunity may be personally liable for an alleged unlawful action generally turns on the 'objective legal reasonableness' of the action . . . assessed in light of the legal rules that were 'clearly established at the time it was taken.'" Anderson v. Creighton, 483 U.S. 635, 639 (1987) (quoting Harlow, 457 U.S. at 818). The extent of the right must be sufficiently obvious that a reasonable official would understand that his actions violate the law. Anderson, 483 U.S. at 635. "The ultimate issue is whether, despite the absence of a case applying established principles to the same facts,

(continued...)

Finally, defendants argue that Spencer cannot demonstrate actual prejudice because his habeas claim was frivolous. Defendants assert that a Spencer had no hope of obtaining relief from the Commonwealth Court because a parolee subject to a parole violation has no right to release on bail.

An inmate's inability to file a frivolous claim does not amount to an actual injury sufficient to state a denial of right of access to the courts claim because depriving an inmate of a frivolous claim deprives him of nothing but the punishment of Rule 11 sanctions. Lewis, 116 S. Ct. at 2181 n.3.

The court concludes that Spencer suffered no actual injury as a result of not obtaining a IFP form because

Spencer's Commonwealth Court habeas corpus petition was frivolous. Spencer had no right to bail with respect to his parole violation because a parolee subject to a parole detainer has no Eighth Amendment right to bail in that he no longer enjoys the benefits of the presumption of innocence with respect to the

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2. (...continued)  
reasonable officials in defendants' position at the relevant time could have believed, in light of what was decided in case law, that their conduct would be unlawful." Good v. Dauphin County Social Services, 891 F.2d 1087, 1092 (3d Cir. 1989). Officials are entitled to qualified immunity if they could have believed their acts were legal, even if officials of reasonable competence could disagree. Callahan v. Lancaster-Lebanon Intermediate Unit 13, 880 F. Supp. 319, 327 (E.D. Pa. 1994). Consequently, qualified immunity protects "all but the plainly incompetent and those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). The court concludes that the right of access to the courts was clearly established at the time of Young's alleged inaction, and that Young, as head librarian, knew or should have known that it was unlawful for her to deny an inmate access to a copy of the Pennsylvania Rules of Appellate Procedure.

crimes which led to his imprisonment and resulting parole. See Burgess v. Roth, 387 F. Supp. 1155, 1162 (E.D. Pa. 1975); Lee v. Pennsylvania Bd. of Probation and Parole, 467 F. Supp. 1043, 1046-47 (E.D. Pa. 1979) (same). Further Spencer's detention on a parole board detainer did not violate Pennsylvania law or Spencer's due process rights under the United States or Pennsylvania Constitutions. The actions of the parole board are subject to certain due process constraints. See Morrissey v. Brewer, 408 U.S. 471 (1972) (holding that parolees detained for parole violation have due process right to initial hearing to determine probable violation, and right to final hearing on revocation decision within reasonable time after detainer lodged against them). "When a parolee has been arrested for a new offense, he may be 'detained on a Board warrant pending disposition of criminal charges . . . [if a] committing magistrate has conducted a preliminary hearing and concluded that there is a prima facie case against the parolee.'" Jezick v. Pa. Bd. of Probation and Parole, 530 A.2d 1031, 1033 (Pa. Commw. Ct. 1987) (quoting 37 Pa. Code § 71.3(2)). In addition, where a parolee is confined within a state correctional institution on a parole board detainer pending new charges, the parole board must hold a final revocation hearing within 120 days from the date that the board receives official verification of the parolee's guilty plea or nolo contendere or guilty verdict at the highest trial court level. Hines v. Pa. Bd. of Probation and Parole, 420 A.2d 381, 383 (Pa. Commw. Ct. 1980); 37 Pa. Code § 71.4(1). The

parole board's delay in holding a final revocation hearing until after trial on the parolee's new criminal charges does not violate the parolee's due process rights. United States Ex. Rel. Burgess v. Lindsey, 395 F. Supp. 404, 411 (E.D. Pa. 1975). Here, at the time he filed his habeas petition, Spencer's detention on a parole board detainer without a revocation determination was lawful because new criminal charges were pending against him and he had been granted the opportunity for a preliminary hearing on the new charges.

Consequently, defendants are entitled to summary judgment on plaintiffs' access to the courts claims.

### **III. CONCLUSION**

Defendants' motion for summary judgment will be granted. An appropriate order was previously filed on July 24, 1997.

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William H. Yohn, Jr., Judge

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DAVID Isamayer :  
WINIFRED YOUNG :  
Defendants :  
:

ORDER

AND NOW, THIS DAY OF July, 1997, upon consideration of defendants' motion for summary judgment and plaintiffs' response thereto, **IT IS ORDERED** that defendants' summary judgment motion is **GRANTED**. Judgment is entered in favor of defendants Donald T. Vaughn, David Isamayer, and Winifred Young, and against plaintiffs Rahkia Vickers and Kenneth Spencer.

An appropriate memorandum will follow.

**BY THE COURT:**

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William H. Yohn, Jr., Judge