

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

RICHARD L. MENGLE,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
DAVID J. KURTZ, RAYMOND	:	
LORENT, JOHN SANDERS,	:	
FORREST SHADEL, JERRY	:	
KNOWLES, and EDWARD BARKETT,	:	
Defendants.	:	NO. 96-968

Newcomer, J. July , 1997

**M E M O R A N D U M**

Presently before the Court is the Motion of Defendants David J. Kurtz, Raymond Lorent and John Sanders for Judgment on the Pleadings or, in the Alternative, for Summary Judgment and the Motion for Summary Judgment of Defendants Forrest Shadel, Jerry Knowles and Edward Barkett. For the reasons that follow, said Motions will be granted and judgment will be entered in favor of defendants and against plaintiff.

**A. Background**

Plaintiff, a pro se prisoner, filed the instant action pursuant to 42 U.S.C. § 1983 alleging that defendants violated his constitutional right to be free from "cruel and unusual punishment." See, U.S. Const. amend. VIII. Defendant Correctional Officer John Sanders violated this right, plaintiff alleges, by (1) grabbing plaintiff's wrists and arms, several times over the course of his incarceration, thereby causing soreness in his wrists and arms, and (2) physically abusing and assaulting plaintiff, both in his cellblock and in the prison gym, on March 27, 1995, thereby causing "sever[e] injuries and

permanent scars" to his hands. (Dep. of Richard Mengle at 74-77, attached as Ex. A to the Mot. of Defs. Kurtz, Lorent, and Sanders for J. on the Pleadings or, in the Alt., for Summ. J. ("Mengle Dep."); Am. Compl. at 3.) Plaintiff also asserts an emotional distress claim, alleging that defendant Sanders repeatedly abused him, both mentally and verbally, throughout the period of his incarceration, thereby causing him to suffer from severe mental anguish and an "uncontrollable nervous condition."<sup>1</sup> (Am. Compl. at 3.) Plaintiff's claims against the remaining defendants--the Warden, the Deputy Warden, and three county commissioners--are based also on the aforementioned conduct of defendant Sanders.

Presently before the Court are defendants' motions for summary judgment.<sup>2</sup>

**B. Summary Judgment Standard**

A reviewing court may enter summary judgment where there are no genuine issues as to any material fact and one party is entitled to judgment as a matter of law. White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988). The evidence presented must be viewed in the light most favorable to the non-moving party. Id. "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the

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<sup>1</sup>Plaintiff describes his "uncontrollable nervous condition" as follows: "I was very nervous about what I did, what I said. Just basically my nerves were on edge." (Mengle Dep. at 65.)

<sup>2</sup> While the motion of defendants Kurtz, Lorent, and Sanders is styled a Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment, this Court treats it solely as one for summary judgment.

jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). "A genuine issue is not made unless the evidence . . . would allow a reasonable jury to return a verdict for [the nonmoving] party." Radich v. Goode, 886 F.2d 1391, 1395 (3d Cir. 1989) (citing Liberty Lobby, 477 U.S. at 248-49). In deciding the motion for summary judgment, it is not the function of the Court to decide disputed questions of fact, but only to determine whether genuine issues of fact exist. Id. at 248-49.

**C. Discussion**

This Court first discusses plaintiff's section 1983 cruel and unusual punishment claim and thereafter discusses his emotional distress claim.

**1. Section 1983 Cruel and Unusual Punishment Claim**

In order to state a cognizable claim under 42 U.S.C. § 1983, a plaintiff must show (1) that a person deprived him of a federal right; and (2) that the person who deprived him of that right acted under color of state law. Groman v. Township of Manalpan, 47 F.3d 628, 633 (3d Cir. 1995). This section does not allow supervisory personnel and administrators to be held liable under a theory of respondeat superior. Ignalls v. Florio, No. 92-2113, 1997 WL 353035, at \*2 (D. N.J. June 13, 1997) (citing Monell v. Department of Social Servs., 436 U.S. 658, 694-95 (1978)). Rather, they may be held liable only if they played some personal role in the alleged violation. Moon v. Dragovich,

No. 96-5525, 1997 WL 180333, at \*3 (E.D. Pa. April 16, 1997); Ignalls, 1997 WL 353035, at \*2. Such personal involvement may be shown by demonstrating that a supervisor or administrator "participated in violating [a plaintiff's] rights, or that he directed others to violate them, or that he, as the person in charge . . . , had knowledge of and acquiesced in his subordinates' violations." Baker v. Monroe Township, 50 F.3d 1186, 1190-91 (3d Cir. 1995); Moon, 1997 WL 180333, at \*3.

The federal right at issue in this case is the Eighth Amendment right to be free from "cruel and unusual punishment." See, U.S. Const. amend. VIII. The Eighth Amendment is the primary source of substantive protection for prisoners in excessive force cases. Collins v. Bopson, 816 F. Supp. 335, 339 (E.D. Pa. 1993) (citing Whitley v. Alberts, 475 U.S. 312, 327 (1986)).

Only the "unnecessary and wanton infliction of pain" constitutes cruel and unusual punishment forbidden by the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5 (1992); see also, Collins, 816 F. Supp. at 339; Wright v. Lubicky, No. 94-3506, 1996 WL 328288, at \*2 (E.D. Pa. June 11, 1996). To determine whether such an infliction has occurred, a court must determine "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Hudson, 503 U.S. at 6 (quoting Whitley, 475 U.S. at 320-21 (internal citations omitted)); see also, Eppers v. Dragovich, No. 95-7673, 1996 WL 420830, at \*3

(E.D. Pa. July 24, 1996). A court should consider the following factors in making this determination: (1) the extent of the injury suffered by the prisoner; (2) whether the use of force was wanton and unnecessary; (3) the need for application of force, (4) the relationship between that need and the amount of force used; (5) the threat reasonably perceived by the officers; and (6) any efforts made to temper the severity of a response.

Hudson, 503 U.S. at 7. While the United States Supreme Court has held that the use of excessive physical force against a prisoner may constitute cruel and unusual punishment even if the prisoner does not suffer serious injury, it also has recognized as follows:

[N]ot . . . every malevolent touch by a prison guard gives rise to a federal cause of action. The Eighth Amendment's prohibition of 'cruel and unusual' punishments necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort 'repugnant to the conscience of mankind.'

Hudson, 503 U.S. at 9-10 (quoting Whitley, 475 U.S. at 327) (internal citations omitted).

In this case, this Court determines that the force about which plaintiff complains and the injuries which he sustained were de minimis and, thus, that his section 1983 claim for cruel and unusual punishment must fail. As stated previously, plaintiff alleges that defendant Sanders (1) grabbed his wrists and arms, several times over the course of his incarceration, thereby causing soreness in his wrists and arms,

and (2) physically abused and assaulted him, both in his cellblock and in the prison gym, on March 27, 1995, thereby causing "sever[e] injuries and permanent scars" to his hands. (Mengle Dep. at 74-77; Am. Compl. at 3.) This Court's determination that these occurrences do not support a section 1983 cruel and unusual punishment claim is based on two grounds. First, plaintiff's deposition testimony, regarding the alleged incidents of "force," tells, not a tale of "malicious[] and sadistic[]" punishment, Hudson, 503 U.S. at 6, but, rather, one of mere "horseplay." Regarding defendant Sanders' grabbings of plaintiff's wrists and arms, plaintiff states that defendant Sanders did this "trying to be playful" and that, when he did this, plaintiff was "not being disciplined." (Mengle Dep. at 76.) Likewise, in detailing the March 27, 1995 incidents in the cellblock and gym, plaintiff describes a non-disciplinary setting and circumstances. In the cellblock, a prisoner was teasing defendant Sanders about his muscles. (Mengle Dep. at 80.) The teasing prompted defendant Sanders, who was just "messing around," to pick plaintiff up and "body slam" him onto the floor of the cellblock. (Mengle Dep. at 54, 81.) Minutes later, the prisoners and officers in the cellblock proceeded to the prison gym, where defendant Sanders indicated that he wanted to wrestle plaintiff and plaintiff acquiesced. (Mengle Dep. at 85-86.) The men wrestled for approximately fifteen minutes, during which time defendant Sanders held plaintiff in several headlocks and pinned plaintiff to the ground four or five times. (Mengle Dep. at 83-

85.) These accounts, both of the wrist and arm grabbings and of the March 27, 1995 incidents, illustrate that defendant Sanders' use of force was, not "malicious[] and sadistic[]," Hudson, 503 U.S. at 6, but, rather, de minimis.<sup>3</sup> See, e.g., Robinson v. Link, No. 92-4877, 1994 WL 463400, at \*1 (E.D. Pa. Aug. 25, 1994) (finding use of force to have been de minimis, and therefore granting summary judgment on Eighth Amendment claim, where officer pulled prisoner along corridor by his handcuffs and hit him in the back); Brown v. Vaughn, No. 91-2911, 1992 WL 75008, at \*1 (E.D. Pa. March 31, 1992) (finding use of force to have been de minimis where officer punched prisoner in chest and spit on him); Moon, 1997 WL 180333, at \*5 (finding use of force to have been de minimis where bruise to prisoner's wrist resulted from officer's pulling on his handcuffs).

The second ground on which is based this Court's determination that the occurrences at issue do not support a section 1983 cruel and unusual punishment claim is the slightness of plaintiff's injuries. Regarding plaintiff's injuries from defendant Sanders' grabbings of his wrists and arms, plaintiff states that he was merely "sore for a little bit." (Mengle Dep.

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<sup>3</sup>This Court notes further that plaintiff concedes in his deposition testimony that the allegations of the Amended Complaint regarding defendant Sanders' use of force against him are exaggerated. Plaintiff states as follows: "The people I had [preparing the Amended Complaint], the inmates[,] . . . messed up the statement [of] facts trying to make my case stronger. . . . [T]hey over-exaggerated a lot of stuff to build up this case. . . . [Defendant Sanders] body slammed me but he didn't . . . proceed to assault me." (Mengle Dep. at 5, 54-55.)

at 77.) Likewise, regarding plaintiff's injuries from the March 27, 1995 incidents in the cellblock and gym, plaintiff states that "for the most part, [he wasn't injured]" and that he merely "got [] some kinks in [his] muscles and stuff from different positions [defendant Sanders] put [him] in . . . ." (Mengle Dep. at 85.) While he further states that he sustained "scrapes," or "scars," to his hands, he explains that said scrapes resulted, not from intentional acts by defendant Sanders, but, rather, from his hands getting caught on defendant Sanders' watch and badge during the wrestling match. (Mengle Dep. at 90-91.) Plaintiff states in addition that he did not see a doctor or nurse about the scrapes and that, to treat the scrapes, he merely "washed [them] off with soap and water" and applied one Band-Aid. (Mengle Dep. at 92.) These accounts of the injuries resulting both from the repeated wrist and arm grabbings and from the March 27, 1995 incidents indicate that plaintiff's injuries were de minimis. See, e.g., Collins, 816 F. Supp. at 340 (finding that injury was de minimis because medical records showed no evidence of correctional officer's alleged beating of prisoner); Moon, 1997 WL 180333, at \*5 (finding injury to have been de minimis where bruise to prisoner's wrist resulted from officer's pulling on his handcuffs and medical records showed that prisoner required no medical treatment, refused medication, and stated that he was in no pain); Siglar v. Hightower, 112 F.3d 191, (5th Cir. 1997) (finding injury to have been de minimis where guard twisted prisoner's arm behind his back and twisted his ear,

causing ear to be bruised and sore for three days, but prisoner did not seek or receive any medical treatment).

As defendant Sanders' use of force and plaintiff's resulting injuries were de minimis, the cruel and unusual punishment clause of the Eighth Amendment is not implicated. See, U.S. Const. amend. VIII. While perhaps inappropriate, defendant Sanders' conduct simply does not rise to the level of a constitutional violation. Accordingly, this court will grant defendant Sanders' motion for summary judgment on plaintiff's section 1983 cruel and unusual punishment claim.

As this Court has found no underlying constitutional violation on the part of defendant Sanders, plaintiff's derivative section 1983 claims against the remaining defendants must fail. See, e.g., Rodriguez v. City of Passaic, 730 F. Supp. 1314, 1327 (D. N.J.), aff'd without op., 914 F.2d 244 (1990) (citing City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986)) (granting summary judgment on plaintiff's derivative section 1983 claims after finding no underlying constitutional violation). Accordingly, this Court will grant also the remaining defendants' motions for summary judgment on plaintiff's section 1983 cruel and unusual punishment claims.

## **2. Emotional Distress Claim**

As this Court has determined that plaintiff's section 1983 cruel and unusual punishment claims must fail because defendant Sanders' use of force and plaintiff's injuries were de minimis, plaintiff's emotional distress claim must fail

as well.

As stated previously, plaintiff alleges that defendant Sanders repeatedly abused him, both mentally and verbally, throughout the period of his incarceration, thereby causing him to suffer from severe mental anguish and an "uncontrollable nervous condition."<sup>4</sup> (Am. Compl. at 3.) Plaintiff's emotional distress claims against the remaining defendants derive from the aforementioned conduct of defendant Sanders as well.

Under 42 U.S.C. § 1997e(e), which was enacted as part of the Prison Litigation Reform Act, however, "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e); see also, Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). "In the absence of any definition of 'physical injury' in the new statute, . . . the well established Eighth Amendment standards [should] guide [a court's] analysis in determining whether a prisoner has sustained the necessary physical injury to support a claim for mental or emotional suffering." Siglar, 112 F.3d at 193. Under those standards, "the injury must be more than de minimis, but need not be significant." Id.

In this case, as this Court has determined already that plaintiff's injuries were de minimis, plaintiff's emotional

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<sup>4</sup>See, infra, note 1.

distress claim against all defendants must fail. See, Davage v. United States, No. 97-1002, 1997 WL 180336, at \*5 (E.D. Pa. April 16, 1997) (dismissing emotional distress claim under authority of 42 U.S.C. § 1997e(e) because plaintiff made no showing of "physical injury"). Accordingly, this Court will grant defendants' motions for summary judgment on this claim.

**D. Conclusion**

In conclusion, this Court will grant the Motion of Defendants David J. Kurtz, Raymond Lorent and John Sanders for Judgment on the Pleadings or, in the Alternative, for Summary Judgment and the Motion for Summary Judgment of Defendants Forrest Shadel, Jerry Knowles and Edward Barkett, and judgment will be entered in favor of defendants and against plaintiff.

An appropriate Order follows.

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Clarence C. Newcomer, J.

IN THE UNITED STATES DISTRICT COURT  
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RICHARD L. MENGLE,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
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DAVID J. KURTZ, RAYMOND	:	
LORENT, JOHN SANDERS,	:	
FORREST SHADEL, JERRY	:	
KNOWLES, and EDWARD BARKETT,	:	
Defendants.	:	NO. 96-968

O R D E R

AND NOW, this            day of July, 1997, upon consideration of the Motion of Defendants David J. Kurtz, Raymond Lorent and John Sanders for Judgment on the Pleadings or, in the Alternative, for Summary Judgment and the Motion for Summary Judgment of Defendants Forrest Shadel, Jerry Knowles and Edward Barkett, to neither of which plaintiff has responded and after the time period within which plaintiff is required to respond has expired,<sup>5</sup> and in accordance with the foregoing Memorandum, it is hereby ORDERED that said Motions are GRANTED. It is further ORDERED that JUDGMENT is ENTERED in favor of defendants and against plaintiff. It is further ORDERED that defendants' Motion for Continuance of Trial is DENIED as moot.

AND IT IS SO ORDERED.

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<sup>5</sup>By Order dated June 24, 1997, this Court Ordered plaintiff to file his response on or before July 15, 1997. He did not do so. Thereafter, via conference call on July 17, 1997, and upon agreement of both parties, this Court Ordered plaintiff to mail his response to the Court the following morning. Plaintiff apparently did not do so because, to date, this Court has not received it.

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Clarence C. Newcomer, J.