

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

FREDERICK RAY : CIVIL ACTION
: :
v. : :
: :
CAPT. DONALD DOUGHERTY and : :
STAFF SGT. ROBERT COCHLIN : NO. 96-568

M E M O R A N D U M

WALDMAN, J.

July 31, 2003

Presently before the court is defendants' motion for summary judgment in this pro se 42 U.S.C. § 1983 action.

Plaintiff, a former inmate at Chester County Prison ("the prison"), seeks damages from defendants for the alleged violation of his Eighth Amendment rights. Plaintiff claims that defendant Cochlin used excessive force in removing plaintiff from his cell and that the conditions of his confinement in punitive isolation constituted cruel and unusual punishment.

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).

From the pertinent evidence as uncontroverted or taken in a light most favorable to plaintiff, the following appears.

On February 21, 1994, plaintiff was involved in a physical altercation with another inmate in the Prison gymnasium after which defendant Cochlin escorted plaintiff back to his cell. After being informed by Mr. Cochlin that plaintiff had been involved in this altercation, defendant Dougherty instructed Mr. Cochlin to transfer plaintiff to a cell in the maximum security area of the prison.

When Mr. Cochlin informed plaintiff that he was to be transferred, plaintiff became very agitated and refused to leave his cell. Sgt. Cochlin then informed Capt. Dougherty that plaintiff had refused to be transferred, was highly agitated and was exhibiting aggressive behavior.

As of February 21, 1994, plaintiff had an extensive disciplinary record including two assaults on inmates, assaulting a guard with a weapon, threatening guards on three occasions,

destroying property on five occasions and causing disturbances on six occasions, one involving the flooding of a cellblock tier.

Capt. Dougherty instructed Sgt. Cochlin to secure the assistance of other officers to remove plaintiff from his cell and transport him to the maximum security area. Sgt. Cochlin then enlisted Sgts. Benditt, McMillan and Brooks and Correctional Officer Richardson to assist in removing plaintiff from his cell, using shields and batons if necessary. When these officers arrived at plaintiff's cell, plaintiff brandished a razor blade and began cursing at the officers.

Sgt. Cochlin avers that, because of plaintiff's "agitated state of mind and violent and assaultive behavior, a decision was made to place [plaintiff] in isolation rather than in regular maximum security for his own safety as well as the safety of others." Plaintiff contends that the decision to place him in isolation could not be for his own safety because he had never been diagnosed as psychotic or suicidal by a psychologist.

The officers entered plaintiff's cell, physically disarmed him of the razor blade and handcuffed him. Sgt. Cochlin sustained a cut on his face for which he received medical attention.

Plaintiff's back and ribs were injured and he sustained cuts on his arms and hands. Plaintiff subsequently pled guilty to aggravated assault of Sgt. Cochlin and received an additional prison sentence which he is now serving in a state prison.

Plaintiff was transported to the isolation area in the maximum security section of the prison and placed in his own cell. Plaintiff continued to curse and yell at the officers and to exhibit aggressive and uncontrolled behavior. Sgt. Cochlin directed officers to remove plaintiff's clothing except for his underwear, remove the mattress from his cell and turn off the plumbing. Sgt. Cochlin avers that he did this because of plaintiff's "very agitated state of mind" and "violent behavior." Plaintiff's handcuffs were then removed by having him extend his hands through an opening in the cell bars.

Plaintiff was housed in isolation for 31 days until March 24, 1994. At a disciplinary hearing on February 23, 1994, plaintiff was found guilty of causing a disturbance, interfering with officers in the performance of their duties and other misconduct. He was sentenced to 30 days of "restriction" and "loss of privileges" until March 23, 1994. At a subsequent hearing on February 28, 1994, plaintiff was found guilty of assaulting an inmate and causing a disturbance and his sentence was extended until April 22, 1994. Plaintiff was also later found guilty of threatening and assaulting an officer, disobeying an order and causing a disturbance. His sentence was extended again until June 21, 1994.

While in isolation, plaintiff was monitored at all times by cameras and reviewed each day to determine whether he had calmed sufficiently such that the plumbing could be restored and his clothing and mattress returned safely. Capt. Dougherty

avers that this occurred within 48 hours. Plaintiff avers, and the court will assume, that it was three days.

Plaintiff complains that the isolation area was unclean, had a stench of urine and feces, that the ventilation was inadequate and that his cell was cold. He submitted a statement of a fellow inmate that the isolation area "gets chilly at night."

In an Inmate Request of February 23, 1994, plaintiff complained about the smell of human feces and urine in the isolation area. The Block Officer noted that the area smelled because a neighboring inmate had "a tendency of urinating and defecating without flushing his toilet" and of "urinating on the floor." Sgt. Brooks responded to plaintiff's complaint by stating that the neighboring inmate's cell is disinfected every other day and the area is kept as clean as possible.

In another Inmate Request dated March 12, 1994, plaintiff again complained that the Block should be cleaned daily and, to the best of his recollection, had only been cleaned five times since February 21, 1994. Sgt. Brooks responded by stating that the isolation tier is swept and mopped every day and that while the individual cells were not cleaned every day, neither were the cells in other areas of the prison.

Medical attention was available to plaintiff upon his request and he was never denied medical attention while in isolation. On February 21, 1994, officers escorted plaintiff to the prison medical department where he received medical attention

for cuts on his hands and arms. Plaintiff was allowed one hour of exercise outside his cell each of the 31 days he was in isolation but was handcuffed and shackled for 24 of these days.

In a March 6, 1994 Inmate Request addressed to Capt. Dougherty, plaintiff stated that he wanted "to be taken off the cuff order" he had been subject to for two weeks. Plaintiff also asked what the purpose of maintaining the cuff was because he had already had his disciplinary hearing and received his punishment. Sgt. Brooks responded that the cuff order would be lifted but that it would be reinstated if and when plaintiff were "to act up."

Plaintiff remained on "cuff and shackle order" although Block Officers found that he had not been a problem "as of late."

On March 13, 1994, plaintiff submitted another Inmate Request to Capt. Dougherty inquiring why he could not attend religious services. No response is listed on this form.¹

In an Inmate Request form of March 20, 1994 addressed to the Section 2 Block Sergeant, plaintiff stated that he had been in punitive isolation for 30 days and believed he should be

1. A restriction on attendance at religious services while in segregated confinement is not cruel and unusual punishment and does not violate the Eighth Amendment. Moreover, a restriction on physical attendance at religious services with the general population by an inmate placed in segregated confinement for legitimate penological or security reasons is not otherwise constitutionally prohibited. See O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987); Little v. Norris, 787 F.2d 1241, 1244 (8th Cir. 1986); Stroud v. Roth, 741 F. Supp. 559, 562 (E.D. Pa. 1990). There is no allegation or evidence that plaintiff requested and was denied religious materials or contact with a chaplain.

moved because his next disciplinary sentence was scheduled to begin and was not to be served in isolation. Sgt. Brooks responded that plaintiff's punitive isolation sentence did not expire until March 21, 1994.

On March 21, 1994, plaintiff submitted another Inmate Request to the Section 2 Block Sergeant inquiring about the results of the daily review of his "cuff order" and asking why he was still in punitive isolation even though his sentence had expired. Sgt. Brooks responded that the cuff and shackle order is lifted as of March 22, 1994, but plaintiff was "to remain behind the door at this time to see how [he would] react."

The Eighth Amendment imposes a duty on prison officials to "provide humane conditions of confinement; 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 inmate.'" Farmer v. Brennan, 511 U.S. 825, 832 (1994) (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)). To sustain a claim that a prison official has violated the Eighth Amendment, two requirements must be met.

First, the deprivation alleged must be objectively "sufficiently serious" to result in the denial of "the minimal civilized measure of life's necessities." Id. at 833 (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). While a combination of conditions of confinement may constitute an Eighth Amendment violation where each might not do so on alone, they must have "a mutually enforcing effect that produces the

deprivation of a single, identifiable human need such as food, warmth, or exercise." See Wilson v. Seiter, 501 U.S. 294, 304 (1990). The length of any restriction or deprivation is also important as conditions which might be unacceptable for many weeks or months may not be intolerably cruel for a few days. Hutto v. Finney, 437 U.S. 678, 686-87 (1978); Hoptowit v. Ray, 682 F.2d 1237, 1259 (9th Cir. 1982); Davidson v. Coughlin, 1997 WL 342092, *9 (S.D.N.Y. June 19, 1997) (denial of exercise for fourteen days not of such length to violate Eighth Amendment); Vargas v. House of Corrections, 1989 WL 79337, *2 (E.D. Pa. June 29, 1989) (noting confinement in unclean insect infested cell for two days and sleeping on bare floor for two days does not violate Eighth Amendment).²

Second, the official must exhibit "deliberate indifference" to inmate health or safety. A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety. Farmer, 511 U.S. at 837. The official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw that inference. Id.

In addressing a claim of use of excessive force in violation of the Eighth Amendment, the focus is on whether force

2. Also instructive, although not precedential, is Wilson v. Timko, 1992 WL 185446, *3 (9th Cir. Aug. 5, 1992) (turning off water and stripping cell of disruptive inmate for two and a half days insufficient to violate Eighth Amendment).

was applied in a good-faith effort to maintain or restore discipline, or simply for the purpose of maliciously and sadistically causing harm. Hudson v. McMillian, 503 U.S. 1, 6-7 (1992). Factors to be considered include the extent of injury suffered by an inmate, the threat reasonably perceived by responsible officers, the need for application of force, the relationship between that need and the force used and any attempt realistically to avert the use of force. Id. at 7. Prison officials are and necessarily must be "accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Id.

Segregated detention is not per se cruel and unusual unless the conditions of confinement are inhuman or without any penological justification. Young v. Quinlan, 960 F.2d 351, 364 (3d Cir. 1992). Such confinement may be necessary to punish, control and protect inmates whose presence in the general population would pose an unmanageable risk. Id.

There was a clear penological interest in isolating plaintiff. Prison authorities were responding to defiant, violent and agitated behavior by an inmate with a substantial history of misconduct including physical assault and destruction of property. Contrary to plaintiff's suggestion, prison officials are not required to obtain a psychiatric diagnosis that an inmate is pathologically dangerous to act on their observation of violent and agitated behavior.

One cannot reasonably find from the record presented that plaintiff was subjected to conditions so objectively severe as to constitute cruel and unusual punishment. The removal of plaintiff's outer clothing and bedding for three days in the circumstances did not violate the Eighth Amendment. See Blackiston v. Johnson, 1994 WL 725003, *7-8 (E.D. Pa. Dec. 30, 1994) (noting "inmates use such items as weapons" and finding removal of outer clothing and bedding of agitated inmate in RHU "may have been physically and emotionally uncomfortable" but "was not a denial of the minimal civilized measure of life's necessities" and did not pose "a substantial risk of serious harm"). The same is true of the suspension of water flow for three days to the cell of an aggressive inmate with prior involvement in the flooding of a tier. There is no evidence that during this period plaintiff was prohibited from washing or using toilet facilities. Plaintiff has not presented evidence of such extreme temperatures, lack of ventilation or uncleanliness to support a finding of substantial risk of serious harm. See Peterkin v. Jeffes, 661 F. Supp. 895, 904-05 (E.D. Pa. 1987)(evidence of poor ventilation resulting in discomfort but not threat to life or health and testimony of "very hot" temperatures unaccompanied by health hazard insufficient to sustain Eighth Amendment conditions claim), aff'd, 885 F.2d 10-21 (3d cir. 1988); Rambert v. Horn, 1996 WL 583155, *3 (E.D. Pa. Oct. 11, 1996) (to constitute cruel and unusual punishment cold temperature must be so extreme as to pose serious risk of harm).

That plaintiff was restrained for several weeks following an assault on an officer and a display of highly agitated behavior also does not constitute cruel and unusual punishment.

The evidence of record is also insufficient to sustain a finding that either defendant perceived and then deliberately disregarded a substantial risk of harm to plaintiff's health or safety. Plaintiff's behavior and condition were continuously monitored. The restrictions imposed were eased consistent with his behavior. He received prompt and reasonable responses to his complaints about odors, cleanliness and the duration of his sentence. There is no evidence that plaintiff complained about his health, that he faced a substantial risk of harm or to sustain a finding that either defendant perceived any such risk.

The nature of the conditions of which plaintiff complains, in view of the length of time he was subject to them, does not constitute the type of "extreme deprivations [which] are required to make out a conditions of confinement claim." Hudson, 503 U.S. at 9.

Plaintiff has also failed to sustain his excessive force claim against Sgt. Cochlin. It is uncontroverted that plaintiff refused an order peaceably to leave his cell, was behaving in an aggressive manner and was threatening Sgt. Cochlin and other officers with a razor blade. When confronted by corrections officers plaintiff did not drop his weapon. Sgt. Cochlin's face was cut in the same effort to subdue plaintiff as were plaintiff's hands and arms. That plaintiff committed an

aggravated assault against Sgt. Cochlin is not open to question in view of plaintiff's guilty plea to that offense. See DiJoseph v. Vuotto, 1997 WL 369363, *2-3 (E.D. Pa. June 27, 1997) (plaintiff's guilty plea to aggravated assault under Pennsylvania law preclusively establishes his attempt to cause serious bodily injury or bodily injury with a deadly weapon).

The only injuries for which plaintiff required medical attention were razor cuts to his hands and arms. Any reasonable corrections officer would have perceived a serious continuing threat to the physical safety of officers and inmates if an inmate with plaintiff's record and behavior were not relieved of a potentially deadly weapon. Plaintiff defied Sgt. Cochlin's verbal order to leave his cell peacefully. The need for force to maintain discipline and ensure the safety of others was apparent. The evidence does not show that any officer used force disproportionate to the threat posed by plaintiff's belligerent wielding of a dangerous weapon and combative behavior.

The only reasonable conclusion from the evidence of record is that the force used by Sgt. Cochlin and the others was in a good-faith effort to disarm, subdue and transfer plaintiff to maintain discipline and obviate a threat to the safety of others at the institution. See Blackiston, 1994 WL 725003 at *5 (officers justified in using force causing bruises to head and ribs of agitated inmate wielding razor blade). See also DeArmas v. Joycox, 1993 WL 37501, *4 (S.D.N.Y. Fed. 8, 1993) (punch to arm and kick to knee of inmate during confrontation insufficient

to sustain excessive force claim absent medical evidence substantiating any significant injury).

Even if true, plaintiff's contention that the length of his isolation and restraint violated state prison policy and regulations would not substantiate an Eighth Amendment claim.³ The violation by local officials of state law is not a federal constitutional violation. See Chesterfield Dev. v. City of Chesterfield, 963 F.2d 1102, 1105 (8th Cir. 1992); Muckway v. Craft, 789 F.2d 517, 522-23 (7th Cir. 1986); Pollnow v. Glennon, 757 F.2d 496, 501 (2d Cir. 1985); Crocker v. Hakes, 616 F.2d 237, 239 n.2 (5th Cir. 1980). Plaintiff has not demonstrated any violation of his Eighth Amendment rights.

Accordingly, defendants' motion will be granted. An appropriate order will be entered.

3. On the record presented, defendants' actions appear to be consistent with prison regulations set forth in Title 37 Pa. Code.

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O R D E R

AND NOW, this day of September, 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** and accordingly **JUDGMENT** is **ENTERED** in the above action for defendants and against plaintiff.

BY THE COURT:

JAY C. WALDMAN, J.