

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

THOMAS FRANCIS PATRICK BRENNAN : CIVIL ACTION
: :
: :
V. : :
: :
: :
CORRECTIONAL OFFICER FRYER, :
CO1, et al. : NO. 95-6416

MEMORANDUM AND ORDER

FULLAM, Sr.J.

NOVEMBER , 1997

Plaintiff is a state prisoner acting pro se, who has brought this §1983 claim alleging that various prison officials violated his constitutional rights. Specifically, the plaintiff alleges that he was unfairly disciplined for exercising his own First Amendment rights and was labeled a "snitch" and homosexual in retaliation for asserting his Constitutional rights.

After the plaintiff amended his complaint, the defendants filed a motion for summary judgment which was denied by this Court pursuant to an Order dated September 23, 1996. Defendants have now filed a renewed motion for summary judgment. Defendants' motion is denied. This Court will, however, dismiss Bruce Smith, Robert Shannon and David Searfoss as defendants in this case.

As in their prior motion for summary judgment, the defendants have failed to realize that the plaintiff is contending that he was unfairly disciplined for exercising his own First Amendment rights. The defendants have proceeded as if the plaintiff has only alleged that he was disciplined for helping other prison inmates assert

their First Amendment rights. Affidavits of other inmates corroborate the plaintiff's allegations that he was disciplined in retaliation for exercising his own First Amendment rights. Additionally, there still exists a genuine issue of material fact concerning whether plaintiff received a fair hearing with regard to his motion for preliminary injunction.

As to the plaintiff's allegation that he was labeled a "snitch" and homosexual, a disputed factual issue exists that warrants denial of the defendant's motion for summary judgment. Certainly, verbal harassment, by itself, does not constitute a violation of the Eighth Amendment. Maclean v. Secor, 876 F. Supp. 695, 698-99 (E.D. Pa. 1995).

In this case, however, the plaintiff has alleged more than mere verbal harassment: he claims that prison officials spread this information regarding his propensities among the prison population with the hope that other prisoners would assault the plaintiff. A prisoner can state a cause of action under §1983 without alleging physical harassment. See Young v. Coughlin, No. 93-262, 1996 WL 451411, at *2 (S.D.N.Y. Aug. 8, 1996) (finding that prisoner stated cause of action against prison guard for use of sexually suggestive language with intention of inciting attack by inmates, thereby placing prisoner at great risk of physical harm). The plaintiff's allegations here are coupled with corroborating evidence. As such, a genuine issue of material fact exists as to the plaintiff's claims of retaliation.

Although the plaintiff's claims survive this motion for

summary judgment, several defendants will be dismissed from this case. While the plaintiff has attempted to allege the existence of an enormous conspiracy against him, the evidence presented does not support a conspiracy that includes the individuals who reviewed the plaintiff's misconduct appeal. Therefore, defendants Bruce Smith, Robert Shannon and David Searfoss will be dismissed from this case. All other defendants will remain in the case at this time, as the plaintiff has offered evidence of their personal involvement in an alleged conspiracy.

An Order follows.

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ORDER

AND NOW, this day of November, 1997, IT IS ORDERED
that:

1. Defendants' motion for summary judgment is DENIED.
2. Plaintiff's claims against Defendants Bruce Smith, Robert Shannon and David Searfoss are DISMISSED.

Fullam, Sr.J.