

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

JOHN FLAMER,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
DOCTOR CARRILLO, WACKENHOT	:	NO. 96-1816
PRIVATE CONTRACTORS FOR MEDICAL;	:	
GEORGE HILL; CAPTAIN LEVANDOWSKI	:	
SUPERVISOR OF MEDICAL; MR.	:	
GOLDBERG; BARBARA WALRATH;	:	
OFFICER HICKIE; NURSE TRACY;	:	
OFFICER WARREN, SGT. KULP;	:	
NURSE CYNTHIA,	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

December , 1997

Plaintiff brings this pro se action against the Defendants alleging violations of his civil and/or constitutional rights under 42 U.S.C. § 1983. Plaintiff executed a voluntarily dismissal with respect to his claims against Defendants Levandowski, Hill, Walrath and Kulp which was granted by Order of this court dated December 10, 1996. The Motion to Dismiss Plaintiff's Complaint against Defendants Doctor Carrillo, Wackenhut Private Contractors for Medical, Mr. Goldberg, Nurse Tracy and Nurse Cynthia was granted by Order of this court dated May 1, 1997. Presently before the court is Defendants Hickey and Warren's Motion for Summary Judgment¹ and Plaintiff's Answer

¹ Note that this court received a letter filed October 6, 1997 from Plaintiff's attorney in another matter informing the court that Plaintiff is presently incarcerated at Lynchburg City Jail in Lynchburg, VA and that Plaintiff requests that all proceedings related to matters pending in this court be continued until Plaintiff is released from incarceration. As the present action was ready for disposition before Plaintiff's present

thereto. For the following reasons, Defendants' Motion is granted.

BACKGROUND

According to Plaintiff's deposition taken May 22, 1997, Plaintiff claims that Defendant Hickey slammed the gate to his cell on his right leg during the course of an argument. Plaintiff claims that Defendant Hickey kicked the gate to the cell shut with a karate kick and the gate door hit his leg and came back open. (Flamer dep., 5/22/97 at 65, 78.) As a result of the gate being shut on Plaintiff's leg, Plaintiff states that the skin was scraped off his leg, and when he stands on the leg for a long period of time it hurts. (Flamer dep., 5/22/97 at 86.) X-rays revealed no damage to the leg. (Flamer dep., 5/22/97 at 80.) Plaintiff states that Defendant Warren witnessed this assault and took no action in reporting it. (Flamer dep., 5/22/97 at 86.)

Defendant Hickey states in his affidavit of June 30, 1997 that he escorted the Plaintiff from the prison medical unit to his cell and Plaintiff walked into the cell with his back to Defendant Hickey. According to Defendant Hickey, he then closed the sliding iron gate and checked to see that it was secure. (Hickey Aff. ¶¶ 3-6.) Defendant does recall that Plaintiff attempted to engage him in a verbal confrontation, but he denies slamming the gate shut upon the Plaintiff and states that the

incarceration, this motion will be decided without further delay.

cell in which Plaintiff was placed had a sliding gate which locked into position and could not be kicked or otherwise slammed shut. (Hickey Aff. ¶¶ 8-9).

DISCUSSION

Summary judgment shall be awarded "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). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence presented must be viewed in the light most favorable to the non-moving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

The Eighth Amendment's prohibition against cruel and unusual punishment protects prisoners against the "unnecessary and wanton infliction of pain." Whitley v. Albers, 475 U.S. 312, 319, 106 S. Ct. 1078, 1084 (1986)(citations omitted). To prove a violation of the Eighth Amendment, an inmate must show that he has been deprived of the minimal civilized measure of life's necessities and that such deprivation was sufficiently serious. Young v. Quinlan, 960 F.2d 351, 359-360 (3d Cir. 1992)(citations omitted). Furthermore, the plaintiff must prove that the prison official acted with deliberate indifference subjecting him to that deprivation. Id. Deliberate indifference has been defined

as subjective recklessness, or the actor's conscious disregard of substantial harm that may result from his or her action. Farmer v. Brennan, 511 U.S. 825, 839, 114 S. Ct. 1970, 1980 (1994).

In the present case, the fact of whether Defendant Hickey slammed the gate shut on the Plaintiff's leg or not is in dispute. However, taking the facts in the light most favorable to the plaintiff and assuming that Defendant Hickey did slam the gate shut on Plaintiff's leg, Plaintiff has still failed to produce sufficient facts from which a reasonable jury could conclude that Defendant Hickey's actions rose to a level of cruel and unusual punishment as proscribed by the Eighth Amendment. Plaintiff has also failed to produce sufficient facts from which a reasonable jury could conclude that Defendant Warren's actions or inactions rose to a level of cruel and unusual punishment under the Eighth Amendment.

An appropriate Order follows.

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OFFICER HICKIE; NURSE TRACY;	:	
OFFICER WARREN, SGT. KULP;	:	
NURSE CYNTHIA,	:	
Defendants.	:	

ORDER

AND NOW, this day of December, 1997 upon consideration of Defendants Hickey and Warren's Motion for Summary Judgment and Plaintiff's Answer thereto, IT IS HEREBY ORDERED that Defendants' Motion is GRANTED.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.