

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

ARNOLD KING : CIVIL ACTION
 :
 v. :
 :
 DONALD T. VAUGHN, et al. : NO. 95-319

M E M O R A N D U M

WALDMAN, J.

December 29, 1997

I. BACKGROUND

Plaintiff is an inmate at SCI Pittsburgh. He seeks compensatory and punitive damages pursuant to 42 U.S.C. § 1983 for the alleged violation of his constitutional rights while he was incarcerated at SCI Graterford.¹ Plaintiff claims that defendant Caison failed to protect plaintiff from a fellow inmate and transferred plaintiff in retaliation for his complaining about the fellow inmate. He claims that defendants Caison, Terra and Barone threatened him for making such complaints.

II. LEGAL STANDARD

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

1. Plaintiff was housed at Graterford from May 1991 through October 1994.

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).

The facts as uncontroverted or construed in a light most favorable to plaintiff are as follow.

III. FACTS

At all times relevant to this action, Creighton Caison held the position of Administrative Captain, Robert Terra was a Security Captain and Michael Barone was a Correctional Officer III. Messrs. Terra and Barone worked in SCI Graterford's security office. Donald Vaughn was the Superintendent of Graterford.

Plaintiff met James Daughtrey, a fellow inmate, in November 1992 and had frequent contact with him until June 1994.²

2. Throughout their submissions, the parties refer to a James Daughtrey, but his name is spelled Daugherty in Department of Corrections ("DOC") records. The court will use the spelling
(continued...)

Plaintiff and Mr. Daughtrey became friends and eventually became involved in a sexual relationship. At the time of his deposition, plaintiff was 35 years old, 6 feet tall, approximately 175 pounds and, as self-described, "physically fit."

Plaintiff testified that Mr. Daughtrey expected plaintiff to accompany him to certain places and demanded that plaintiff not become "involved" with anyone else. Plaintiff testified that Mr. Daughtrey threatened to accuse him of rape or kill him on several occasions if he did not comply with Daughtrey's demands. There is no evidence that Mr. Daughtrey ever forced plaintiff to have sex against his will.

In March 1993, Mr. Daughtrey moved into the cell next to plaintiff's on D-Block. Later that month, plaintiff had the first of two "private" conversations with defendant Caison. Plaintiff told Capt. Caison that Mr. Daughtrey had "a problem" and that plaintiff wanted to get away from him.³ Plaintiff explained that Mr. Daughtrey wanted plaintiff "to look upon him as a woman." Capt. Caison told plaintiff he would "have to learn how to get along with Daughtrey because Daughtrey [was] a good friend" and that "[Daughtrey] is a woman and he should be treated

2. (...continued)
used by the parties.

3. Plaintiff testified that he wanted Caison to "un-double" him and Daughtrey. Given plaintiff's testimony that he and Daughtrey did not become cellmates until September 1993, it is unclear what plaintiff meant by "un-double."

like a woman." Plaintiff felt that Mr. Caison was taking Mr. Daughtrey's side.

In May or June 1993, Daughtrey came into plaintiff's cell and "stabbed" him with a homemade "whack." Plaintiff "think[s]" the stabbing occurred at approximately 6:15 one evening. Plaintiff first testified that Mr. Daughtrey stabbed him in his right side and left arm and later stated he was stabbed in his left side and arm. Plaintiff testified that blood was drawn as a result of the stabbing, however, he acknowledges that he did not call out for help or seek any medical attention.

After this incident, Mr. Daughtrey and plaintiff went together to see Capt. Caison. Plaintiff related that Mr. Daughtrey had stabbed him. Mr. Daughtrey told Capt. Caison he stabbed plaintiff because he was afraid plaintiff "cheated on him." Plaintiff denied cheating on Mr. Daughtrey and said he had no intention of leaving Mr. Daughtrey. Capt. Caison then stated that "[w]e will straighten this out" and told plaintiff to "think twice before leaving Daughtrey" and if he did, he would be kept in the RHU on AC status. Capt. Caison avers that he would have placed plaintiff in Administrative Custody ("AC") for his own protection.

Plaintiff testified that after this incident "[e]verything had improved" and "things [were] running smoothly" between plaintiff and Mr. Daughtrey for a "couple months."

DOC Directive DC-ADM 802 provides:

It is the policy of the Department of Corrections to provide a safe and secure environment for all staff and inmates. Administrative Custody is to be used to further this purpose by separating those inmates whose presence in general population would constitute a threat to themselves, others or the safety and security of the institution.

DC-ADM 802(V). This directive lists various reasons for transferring an inmate to Administrative Custody ("AC"), including that "[t]he inmate has requested and been granted self-confinement." Id. at (VI)(A)(1)(g).

On August 8, 1993, plaintiff requested and was granted a transfer to AC as a "self-committal" because "[he was] afraid [he] might cause someone great bodily harm or hurt someone." See Form DC-141 No. 455139 (Part I). Defendant Caison reviewed and approved plaintiff's transfer to AC.⁴ Id. This form indicates that as of August 8, 1993, plaintiff was housed in a "single cell" on D-Block.

On August 10, 1993, plaintiff went before the Program Review Committee ("PRC").⁵ See Form DC-141 (Part II) dated August 10, 1993. This form states that plaintiff asked to be transferred to AC because he was going through "an emotional thing" after a family visit and did not want to "get upset and possibly act out." The form also states that plaintiff claimed

4. Inmates placed in AC are housed in the RHU. See DC-ADM 802(IV)(H).

5. The PRC is a three-member panel that "conducts Administrative Custody hearings, thirty (30) day reviews, makes decisions about continued confinement in the RHU/SMU, and hears all appeals of misconducts." See DC-ADM 802(IV)(G).

"he would have no problem if released to [the general] population" at that time. Plaintiff was returned to the general population on August 10, 1993. Defendant Caison sat as a member of the PRC panel on that occasion.

Plaintiff acknowledges that the form DC-141 accurately reflects the information he provided, but testified that the real reason he requested self-confinement was to follow Mr. Daughtrey to the RHU for fear that he would otherwise claim plaintiff raped him. Plaintiff concedes that he did not express any of this when he requested self-confinement or when he asked to be returned to the general population. Plaintiff also acknowledges that he was free from any physical danger while housed in the RHU.

In September 1993, Mr. Caison signed a "move slip" allowing Daughtrey to move into plaintiff's cell on D-Block. Plaintiff variously testified that Capt. Caison did this "to further his own sexual activity" with Daughtrey and "to further Daughtrey's homosexuality with [plaintiff]." Plaintiff and Mr. Daughtrey were cellmates from September 1993 until June 1, 1994.

On October 1, 1993, plaintiff went to defendant Barone and told him that Mr. Daughtrey was threatening to accuse plaintiff of rape or kill him. Mr. Barone advised plaintiff to speak to Capt. Caison because his "field" was homosexuality and he was better equipped to assist plaintiff with any problems he was having with Mr. Daughtrey.

Plaintiff did speak and relate Daughtrey's threats to Capt. Caison but not until April 1994, five months later.

Plaintiff told Mr. Caison that Daughtrey wanted him "to act like he is a woman" and plaintiff said he "can't do that. Mr. Caison told plaintiff that "[he] can't talk to [Daughtrey] like that ... you have to stroke their ego." Plaintiff variously testified that Mr. Caison "threatened" to put him in the RHU if he did not get along with Mr. Daughtrey and to transfer him if he complained. Plaintiff testified that he was "trapped in a cycle that was unethical" and had nowhere to turn for help with the problems he was experiencing in his homosexual relationship with Mr. Daughtrey.

On April 21, 1994, plaintiff again asked to be placed in AC. See Form DC-141 No. 537541. This form states that plaintiff was a danger to himself and asked to be placed in AC for his own protection. After six days in AC, plaintiff met with the PRC and told the panel he had "personal problems involving family on the street" but now wanted to return to the general population. Plaintiff was then released from the RHU. Plaintiff acknowledged that the information contained in the Form DC-141 accurately reflects what he reported to prison officials, but again claims that he really requested self-committal because he felt compelled to follow Mr. Daughtrey to the RHU.

In May 1994, plaintiff again went with Mr. Daughtrey to defendant Caison's office. All three defendants were present and were "being aggressive towards [him]." Capt. Caison told plaintiff that he and Daughtrey were "lovers" and "to stop manipulating the system." Defendants Terra and Barone told

plaintiff he could have all the sex he wanted to have with Daughtrey. Mr. Barone told plaintiff that if he did not "back off" from Daughtrey, Mr. Barone would send plaintiff to the RHU.

In May 1994, Capt. Caison filled out another "move slip" granting Daughtrey's request to move into plaintiff's cell on C-Block.⁶

On June 1, 1994, plaintiff and Mr. Daughtrey were involved in an altercation in their cell on C-Block. Plaintiff was cited for misconduct on that date by Officer Figueiredo. See Form DC-141 No. 604707 (Part I). Officer Figueiredo states in this report that he saw plaintiff "deliver a punch to the head of [Daughtrey]" and saw plaintiff "on top of [Daughtrey]" when he approached their cell. The narrative portion of the Disciplinary Hearing Report indicates that plaintiff pled guilty to the misconduct, although both the "guilty" and "not guilty" boxes are marked in the "inmate plea" section. Plaintiff was sentenced to a 30-day term of Disciplinary Custody in the RHU.

Plaintiff appealed claiming that the hearing examiner employed illegal procedures and the punishment was not appropriate for the offense. Plaintiff noted in the narrative portion of his appeal that he had requested Mr. Daughtrey's

6. This appears to be inconsistent with other portions of plaintiff's testimony that he and Daughtrey were cellmates from September 1993 until June 1, 1994. Plaintiff also testified that he followed Daughtrey into the RHU on April 21, 1994 and was placed in a cell on C-Block after returning to the general population on April 27, 1994. Apparently, plaintiff was moved to a different cell after being returned to the general population on April 27, 1994.

presence at the misconduct hearing but the hearing examiner had refused. Plaintiff also noted that he told the hearing examiner that he would not plead guilty to fighting with inmate "Kuilan" as the altercation was with inmate Daughtrey.⁷ Plaintiff's appeal was denied by letter of April 4, 1995 which states that the punishment was permissible and proportionate to the seriousness of plaintiff's misconduct. The PRC sustained this decision on June 16, 1994.

After his 30-day term was up, plaintiff was notified that he would be kept in AC pending a transfer to another institution. Plaintiff testified that "to be transferred for fighting is rare" and believed he should have been returned to the general population. Plaintiff acknowledged he was involved in a fight with Daughtrey on June 1, 1994 but stated he "didn't kill anybody." Plaintiff believes he was kept in AC because he "knew too much about [Daughtrey's] activity."⁸

Messrs. Caison and Terra acknowledge that they "recommended" plaintiff be transferred to separate him from Daughtrey, but that they had no other involvement in plaintiff's transfer from SCI Graterford. A PRC Action form dated July 6,

7. It appears that plaintiff was initially unwilling to plead guilty to the misconduct report as literally drafted because it identified inmate Daughtrey as "Kuilan," another name he used or affected, but that plaintiff did not deny fighting with Mr. Daughtrey.

8. Plaintiff states that he knew "Daughtrey would get other lieutenants to bring drugs in[to]" the institution for distribution.

1994 states that plaintiff's disciplinary custody time expired on July 1, 1994 and that plaintiff was to remain in AC "pending submission for transfer, for the secure running of the institution." DOC policy permits inmates to be transferred from Disciplinary Custody to AC after completing a disciplinary sentence. See DC-ADM 802(VI)(A)(2).

A memorandum of August 10, 1994 from Superintendent Vaughn to the Director of Inmate Services states in pertinent part:

Staff request transfer at the request of the Administrative Captain. On 6/1/94 Arnold King and James [Daughtrey] were seen fighting in their cell by a Corrections Officer on the unit. The Administrative Captain determined that there were separation needs based upon their current hostile relationship, which was previously of a homosexual nature. They have admitted to a long term homosexual relationship while cellmates.

Staff recommends transfer to a level 4 housing facility to accommodate separation needs. Staff leaves the selection of that facility to the discretion of Central Office Inmate Services Staff.

This memorandum also indicates that Mr. Vaughn is requesting a separation for the stated reason that plaintiff and Daughtrey "were involved in a homosexual relationship while cellmates" which "soured." See Form DC-186 Separation File. This form also states that on June 1, 1994, plaintiff "received a misconduct for fighting Daughtrey" and [t]he Administrative Captain at SCI-Graterford feels that they should be kept separated."

The Central Office approved the request to transfer plaintiff on September 2, 1994. Plaintiff was transferred to SCI Pittsburgh on October 12, 1994. Department of Corrections "Transfer Petition Instructions" provide that the Superintendent, "DCC" and Unit Management Director are the "appropriate" officials who may sign and date transfer petitions.

IV. DISCUSSION

A. Failure to Protect Claim

The Eighth Amendment requires prison officials to protect inmates from violence inflicted by other inmates. Farmer v. Brennan, 114 S. Ct. 1970, 1976-77 (1994); Young v. Quinlan, 960 F.2d 351, 361 (3d Cir. 1992). "It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety." Farmer, 114 S. Ct. at 1977.

A plaintiff "must show that he is incarcerated under conditions posing a substantial risk of serious harm" and that a prison official acted with "deliberate indifference" to his safety. Id. An official must have known of and disregarded "an excessive risk to inmate health or safety." Id. at 1979. "[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. "[P]rison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded

reasonably to the risk, even if the harm ultimately was not averted." Id. at 1983.

One cannot reasonably conclude from the record presented that defendant Caison violated plaintiff's Eighth Amendment rights. Even assuming plaintiff was exposed to an objectively serious risk of harm, plaintiff cannot demonstrate that Capt. Caison was deliberately indifferent to such a risk. Plaintiff had only one conversation with Caison before Daughtrey came into plaintiff's cell and attacked him. Plaintiff stated that Daughtrey had threatened to accuse plaintiff of rape or kill him if he ended their relationship. Plaintiff, however, did not say Mr. Daughtrey had forced him to have sex or physically harmed him in any way or that he was ending his relationship with Daughtrey. He provided no facts from which Mr. Caison could have concluded that Mr. Daughtrey actually was planning to harm plaintiff. See Prater v. Dahm, 89 F.3d 538, 541 (8th Cir. 1996) ("threats between inmates are common" and do not per se "serve to impute actual knowledge of a substantial risk of harm"). Plaintiff and Daughtrey lived on the same cell block but were not cellmates. Mr. Caison's response not to separate plaintiff from Mr. Daughtrey at this point was not unreasonable.

When plaintiff and Mr. Daughtrey met with Capt. Caison after this incident, plaintiff stated that he would not end his relationship with Mr. Daughtrey. It was reasonable for Mr. Caison to assume that no risk of serious harm to plaintiff existed. Indeed, plaintiff testified that after this incident

"things were running smoothly." See Prater, 89 F.3d at 542 (two-week period between plaintiff's return to prison and altercation was sufficient time for prison officials to believe plaintiff was not in danger). Moreover, whether viewed as a "threat" as plaintiff perceived or as a matter of fact statement, Capt. Caison's statement that he would place plaintiff in the RHU if he left Daughtrey shows that plaintiff would have been protected from any risk of harm which may have arisen had he ended his relationship with Mr. Daughtrey. Plaintiff acknowledged that he was free from physical harm during his requested self-confinement in the RHU.

Mr. Caison approved plaintiff's August 8, 1993 self-confinement request and sat on the PRC panel that returned plaintiff to the general population at his request. Plaintiff had not complained about Mr. Daughtrey for at least two months and had stated he "would have no problem" if returned to the general population. It was reasonable for Mr. Caison to release plaintiff from the RHU on August 10, 1993.

Mr. Caison's decision to allow Mr. Daughtrey and plaintiff to share a cell in September 1993 may have been unwise given the earlier altercation but it does not demonstrate deliberate indifference. It had been at least three months since the incident and plaintiff had not once complained about Mr. Daughtrey. Plaintiff admitted that he and Mr. Daughtrey were involved in a sexual relationship during this time and there is no evidence that this relationship was non-consensual.

When plaintiff approached Capt. Caison in April 1994 again to relate Daughtrey's threats if plaintiff left him, Mr. Caison told plaintiff he would place him in the RHU if he ended his relationship with Daughtrey. Plaintiff was placed in the RHU at his request on April 21, 1994 and returned to the general population several days later at his own request. That plaintiff could request and secure self-confinement further underscores his ability to avoid any imminent physical danger from a jilted or irate Mr. Daughtrey.

As soon as plaintiff and Mr. Daughtrey were involved in a second physical altercation on June 1, 1994, they were separated. That plaintiff was found to have been the aggressor does not suggest that he was exposed to a substantial risk of harm. Mr. Caison then recommended that plaintiff be transferred to another institution to separate him permanently from Mr. Daughtrey.

Capt. Caison's behavior was reasonable under the circumstances and does not support an Eighth Amendment failure to protect claim.

B. Retaliatory Transfer Claim

While a prisoner does not have a constitutional right to remain in a particular correctional institution, he may not be transferred in retaliation for exercising a constitutionally protected right. See Babcock, 102 F.3d at 275; Goff v. Burton, 7 F.3d 734, 737 (8th Cir. 1993), cert. denied, 512 U.S. 1209 (1994); Frazier v. DuBois, 922 F.2d 560, 561-62 (10th Cir. 1990).

There is no evidence that Mr. Caison had the authority to effect a transfer of plaintiff. The Superintendent was the official requesting plaintiff's transfer and the order to transfer came from a Deputy Commissioner. See Hannon v. Terra, 1995 WL 129219, *10 (E.D.Pa. March 24, 1995) (no § 1983 liability where defendants played role in providing information leading to plaintiffs' transfers but did not have power to effect such transfers). Moreover, there is no evidence to support plaintiff's belief that the recommendation of transfer was retaliatory. The pertinent evidence of record shows that plaintiff complained and grieved about Mr. Daughtrey and was not transferred. He was transferred only after a second altercation in which he was the aggressor. One cannot reasonably find that plaintiff was transferred for other than the stated reason that there were "separation needs based upon their [plaintiff's and Daughtrey's] current hostile relationship which was previously of a homosexual nature."⁹

C. Threats

While verbal threats are not actionable under § 1983, a threat conditioned on the exercise of a constitutionally

9. Defendants correctly note that plaintiff also cannot sustain a claim that his transfer constitutes a Due Process violation as inmates have no right under Pennsylvania law to be housed at a particular correctional facility. See 37 Pa.Code § 93.11(a) ("No inmate shall have a right to be housed in a particular institution or in a particular area within an institution."); Meachum v. Fano, 427 U.S. 215, 225-27 (1976) (transfer from one prison to another does not infringe Due Process liberty interest absent some state law right to remain in particular prison).

protected right is. See Hudspeth v. Figgins, 584 F.2d 1345, 1347-48 (4th Cir. 1978); Swint v. Vaughn, 1995 WL 366056, *5 (E.D.Pa. June 19, 1995), aff'd, 72 F.3d 124 (3d Cir. 1995); Hanenberq v. Borough of Bath, 1994 WL 646112, *6 (E.D. Pa. Nov. 16, 1994); Hodgin v. Agents of Montgomery County, 619 F. Supp. 1550, 1553 (E.D. Pa. 1985); Ricketts v. Derello, 574 F. Supp. 645, 647 (E.D. Pa. 1983).

The perceived threats to remove plaintiff if he complained about or ended his relationship with Mr. Daughtrey form the basis of this claim. From defendants' point of view, they were responding to plaintiff's complaints regarding his intimate roller-coaster relationship with Mr. Daughtrey with the only practical alternatives, i.e., get along or end the relationship and leave the prison population. Assuming the statement to be threats by frustrated prison officials, the fact remains that plaintiff told defendant Caison he would not leave Mr. Daughtrey and was not punished after lodging complaints about him. Uncontroverted evidence shows that plaintiff was placed in the RHU only at his request and was released on each such occasion upon request.

V. CONCLUSION

Plaintiff has failed to present evidence from which a reasonable jury could conclude that defendant Caison was deliberately indifferent to a substantial risk of serious harm, that plaintiff's transfer was retaliatory or that defendants Caison, Barone and Terra threatened or punished plaintiff for

exercising of a constitutional right. Accordingly, defendants' motion will be granted. An appropriate order will be entered.

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O R D E R

AND NOW, this day of December, 1997, upon
consideration of defendants' Motion for Summary Judgment (Doc.
#71) and in the absence of any response thereto, consistent with
the accompanying memorandum, **IT IS HEREBY ORDERED** that said
Motion is **GRANTED** and **JUDGMENT** is **ENTERED** in the above action for
defendants and against plaintiff.

BY THE COURT:

JAY C. WALDMAN, J.