

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

ANTHONY D'COLD GUTRIDGE, SR., : CIVIL ACTION
: NO. 97-3441
Plaintiff, :
: v. :
: JOSEPH W. CHESNEY, ET AL., :
: Defendants. :

ORDER-MEMORANDUM

AND NOW, this 7th day of May, 1998, upon consideration of motion by defendants for summary judgment (doc. no. 15), and plaintiff's request for appointment of counsel (doc. no. 19), it is hereby **ORDERED** that defendants' motion for summary judgment is **GRANTED**, and plaintiff's request for appointment of counsel is **DENIED**. The Court's ruling is based on the following reasoning:

1. Plaintiff Anthony D'Cold Guttridge ("Guttridge"), a prisoner at the State Correctional Facility at Frackville, filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 asserting that the defendants violated his Eighth Amendment right to be free from cruel and unusual punishment, his Fourth Amendment search and seizure rights, and his First Amendment right to access to the courts. After discovery was completed, the defendants filed a motion for summary judgment.¹ Plaintiff

¹ In order to prevail on their summary judgment motion, the defendants must "show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When ruling on a motion

failed to respond to defendants' motion. However, he did participate in discovery by attending a deposition at which he described the claims asserted in his complaint in further detail. A transcript of the deposition was attached to the defendants' motion for summary judgment. Because the plaintiff is proceeding pro se, the Court will accept as true all of the facts asserted by the plaintiff in his complaint and deposition and will draw all reasonable inferences in his favor.

2. In order to prevail on his § 1983 claim, plaintiff must demonstrate that: (1) a person deprived him of a constitutional right; and (2) the person who deprived him of that right acted under color of state law. Gorman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). The Court concludes that neither the allegations asserted by plaintiff in his complaint nor the factual claims made at his deposition, even if accepted as

for summary judgment, the Court must view the evidence in the light most favorable to the non-movant. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The Court must accept the non-movant's version of the facts as true, and resolve conflicts in the non-movant's favor. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993).

The defendants bear the initial burden of demonstrating the absence of genuine issues of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Once the defendants have done so, however, the non-moving party ordinarily cannot rest on its pleadings. See Fed. R. Civ. P. 56(e). Rather, the non-movant must then "make a showing sufficient to establish the existence of every element essential to his case, based on the affidavits or by depositions and admissions on file." Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

completely true, rise to the level of a Constitutional violation, and therefore, the defendants are entitled to judgment as a matter of law.

3. Plaintiff's allegation that his Eighth Amendment rights were violated when his blanket was removed for approximately a month and a half is without merit. Conditions of confinement may constitute cruel and unusual punishment if "they result[] in unquestioned and serious deprivations of basic human needs such as food, warmth, or exercise, which deprive inmates of a minimal civilized measure of life's necessities" Nami v. Fauver, 82 F.3d 63, 67 (3d Cir. 1996)(citing Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). It is true that, in certain situations, the failure to provide a blanket can amount to cruel and unusual punishment. See Wilson v. Seiter, 501 U.S. 294, 304 (1991). For instance, the combination of a low cell temperature with a failure to issue blankets can rise to the level of a constitutional violation. Id. Here, however, plaintiff states that the blanket was not taken in the winter, but rather during the period from the middle of April until the beginning of June. Moreover, according to plaintiff, he had available to him at all times two sheets as an alternative means of warmth. (Pl.'s Dep. at 19-23.) Accepting as true all of plaintiff's allegations, the Court cannot conclude that plaintiff was seriously deprived of "a minimal civilized measure of life's necessities." See Nami, 82

F.3d at 67. ²

4. Plaintiff also claims defendant Collier disturbed his effort to sleep by kicking and banging on his cell door at 1:00 a.m. In the light most favorable to the plaintiff, this isolated incident was akin to verbal harassment or abuse. Verbal harassment, without a reinforcing act, ordinarily does not state a constitutional claim. See, e.g., McLean v. Secor, 876 F. Supp. 695, 698 (E.D.Pa. 1995)(citing Murray v. Woodburn, 809 F. Supp. 383, 384 (E.D.Pa. 1993))(other citations omitted).

5. Plaintiff also alleges that, shortly after the incident described in paragraph 4, defendants Resendes and Collier entered plaintiff's cell, handcuffed him and proceeded to search his cell. Plaintiff complains that during the search, the two defendants read the plaintiff's legal mail, and addressed him using profanity and verbal threats. With respect to reading through the plaintiff's legal mail, such claims are typically analyzed as violations of the plaintiff's First Amendment right of access to the courts. Lewis v. Casey, 116 S.Ct 2174 (1996). In order to prove a claim for violation of the right to access to the courts, an inmate must show that his efforts to pursue a nonfrivolous claim were hindered by the defendants. Lewis, 116 S.Ct 2174; see also Oliver v. Fauver, 118 F.3d 175 (3d Cir. 1997)(requiring showing of actual injury); Saunders v. Horn, 959 F.Supp. 689 (E.D.Pa. 1996)(same). Plaintiff acknowledges,

² Plaintiff's request for injunctive relief is moot because his blanket was returned to him. (Pl.'s Dep. at 86-87.)

however, that the papers read by defendants were "nothing real important." (Pl.'s Dep. at 43.) Hence, according to plaintiff's own version of the facts, the actions of defendants Resendes and Collier did not interfere with the plaintiff's attempts to pursue a legal claim. Therefore, the reading of plaintiff's legal papers does not rise per se to the level of a constitutional violation. With respect to the verbal threats and profanity, as was stated earlier, verbal abuse and harassment, absent reinforcing acts, do not ordinarily give rise to a constitutional violation under § 1983. See, e.g., McLean, 876 F. Supp. at 698 (citing Murray, 809 F. Supp. at 384)(other citations omitted).

6. Plaintiff further claims that, during the search of plaintiff's cell and while plaintiff was handcuffed, defendant Resendes pushed him against a wall. According to plaintiff, the push resulted in a small scratch on his cheek.(Pl.'s Dep. at 53-55.) The Court will consider his allegations as one of use of excessive force in violation of the Eighth Amendment. To determine whether the defendants violated the Eighth Amendment, the Court must analyze: (a) whether the prison official acted with a sufficiently culpable state of mind; and (b) whether the alleged wrongdoing was "sufficiently serious" to establish a constitutional violation. Hudson v. McMillian, 503 U.S. 1, 7 (1992). Even assuming that plaintiff could show that defendant Resendes acted with the requisite state of mind, viewing plaintiff's allegations in the light most favorable to the plaintiff, the alleged wrongdoing of defendant Resendes was not

"objectively harmful enough" to establish a constitutional violation. Hudson, 503 U.S. at 8.

7. The Supreme Court has held that whenever a prison official "maliciously and sadistically uses force to cause harm," contemporary standards of decency are violated even if the resulting injuries are not significant. Id. However, that does not mean that "every malevolent touch by a prison guard gives rise to a federal action." Id. Nor does "every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violate[] a prisoner's constitutional rights". Id. (quoting Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir. 1973)). In other words, the Supreme Court has recognized that certain "de minimis uses of physical force, provided that the use of force is not of a sort 'repugnant to the conscience of mankind,'" do not rise to the level of a constitutional infringement. Id. at 9-10. Therefore, although the plaintiff need not establish a significant physical injury in order to prevail on his claim of use of excessive force, he must establish that the force used rises above the "de minimis level of imposition [upon constitutional rights] with which the Constitution is not concerned." Ingraham v. Wright, 430 U.S. 651, 674 (1977); Barber v. Grow, 929 F. Supp. 820, 823 (E.D.Pa. 1996).

8. Accepting as true plaintiff's version of the facts, including being handcuffed and pushed against the wall, and noting that he suffered a small scratch on the cheek as a result of confrontation, the Court finds that the incident between

plaintiff and defendant Resendes involved a de minimis use of force of a kind which was not "repugnant to the conscience of mankind." See, e.g., Robinson v. Link, 1994 WL 463400 (E.D.Pa. Aug. 25, 1994)(allegations that prisoner was handcuffed, dragged along a corridor, and hit in the back were found to be de minimis); Brown v. Vaughn, 1992 WL 75008 (E.D.Pa. March 31, 1992)(allegations that guard struck inmate in the chest and spit on him found to be de minimis); Colon v. Wert, 1997 WL 137172 (E.D.Pa. March 21, 1997)(allegation that correctional officer slammed a cell door into the prisoner's chest, aggravating a pre-existing back and neck injury, found to be de minimis).

9. Plaintiff claims that on May 23, 1997, when plaintiff returned from yard exercise, defendants Collier and Resendes strip searched him. According to plaintiff, it was normal procedure at the institution to strip search prisoners housed on the restrictive housing unit when leaving for and returning from yard exercise. During the search in question, plaintiff was ordered to get on top of his bed, and while there, defendant Collier spread plaintiff's buttocks with his hands and placed his face against the plaintiff's rectum as defendant Resendes laughed. Plaintiff claims the defendants' actions caused him embarrassment and humiliation. Basically, what plaintiff described is an ordinary strip search and visual body cavity search carried out with a dose of verbal harassment. The Court will analyze the legal basis for this claim under both the Fourth and Eighth Amendments.

10. To the extent that plaintiff is asserting that the strip search violated the Fourth Amendment, his claim is without merit. The United States Supreme Court has held that inmates have no Fourth Amendment right to be free from strip searches and that prison officers may conduct body cavity and strip searches without probable cause so long as the search is conducted in a reasonable matter. Bell v. Wolfish, 99 S.Ct. 1861, 1884 (1979); Wilson v. Shannon, 982 F. Supp. 337 (E.D.Pa. 1997). The reasonableness of the search is determined by balancing "the need for the particular search against the invasion of the personal rights that the search entails." Bell, 99 S.Ct. 1884. Under this balancing test, several courts have found that strip searches of prisoners upon leaving and returning to a segregated unit, like the one where plaintiff was housed at the time of the search, is constitutionally permissible. Goff v. Nix, 803 F.2d 358, 370-71 (8th Cir. 1986)(upholding visual body cavity search of segregation unit inmates before and after going to exercise area). See also Arruda v. Fair, 710 F.2d 886 (1st Cir. 1983)(validating strip searches of inmates traveling from segregated housing unit to law library, infirmary, or visitor's rooms); In Campbell v. Miller 787 F.2d 217, 228 (7th Cir. 1986)(permitting visual body cavity searches of high security inmates being transported to law library). Furthermore, strip searches may be conducted in the presence of other guards and prisoners. DiFilippo v. Vaughn, 1996 WL 355336 at * 2 (E.D.Pa. June 24, 1996). Although plaintiff may have felt embarrassed and

humiliated by the search, under the relevant standard of law, the facts asserted do not constitute a violation of the Fourth Amendment.

11. To the extent that plaintiff is asserting that the strip search constituted excessive force which violated his Eighth Amendment rights, that claim is also without merit. Plaintiff has not alleged that any of the defendants struck him or used force against him, nor has he asserted that he suffered any physical injury as a result of the strip search. Therefore, plaintiff has not met his burden under Hudson v. McMillian. See 112 S.Ct. 995. In light of plaintiff's allegations, the Court cannot conclude that the defendants acted maliciously or sadistically or that they used force considered "repugnant to the conscience of mankind." Id.

12. Plaintiff alleges an Eighth Amendment violation based on the defendants' failure to furnish plaintiff with one of his meals on two separate dates. Specifically, plaintiff alleges that on April 18, 1997, defendant Collier did not provide him with breakfast, and that on May 24, 1997, defendant Resendes refused to provide him with lunch. While it is true that in order to satisfy its obligations under the Eighth Amendment a correctional institution must furnish prisoners with adequate food, the alleged deprivation of a single meal on two separate occasions, over a month apart, is not serious enough to rise to the level of a constitutional violation. See Bellamy v. Bradley, 729 F.2d 416, 419 (6th Cir. 1984)(lack of meals for entire day

did not constitute Eighth Amendment violation); Islam v. Jackson, 782 F.Supp. 1111, 1114 (E.D.Pa. 1992); Robinson v. Link, 1994 WL 463400 *1 (E.D.Pa. Aug. 25, 1994)(missing breakfast on one day). Such conduct simply does not amount to deliberate indifference toward plaintiff's nutritional needs. Robinson 1994 WL 463400 at *1.

13. Plaintiff claims that on May 28, 1997, he received a letter stating that his aunt had passed away. He immediately asked defendant Resendes if he could speak to a counselor to discuss his feelings of sorrow about her passing. Defendant Resendes merely laughed and said that a counselor would not be provided unless the plaintiff was in danger of harming himself. Later that day, when another corrections officer came on duty, plaintiff again requested a counselor. Ultimately, that same evening, a counselor did come to speak to plaintiff. However, despite the urgency earlier demonstrated by the plaintiff, he declined to speak to the counselor because "[he] was asleep, [he] didn't want to even talk then." (Pl.'s Dep. at 46).

14. The Court will interpret plaintiff's allegations regarding his request for a counselor as a claim that defendants demonstrated deliberate indifference to his medical needs in violation of the Eighth Amendment. To prove his claim, plaintiff must show that: (a) he had a serious medical need; and (b) the defendants were aware of his need and failed to act despite substantial risk of harm. Farmer v. Brennan, 114 S.Ct 1970 (1994); Estelle v. Gamble, 97 S.Ct. 285, 291 (1976). The

standard of "deliberate indifference" for physical illness is also applicable in evaluating the constitutional adequacy of psychological or psychiatric care provided at a jail or prison. In making such evaluations, the key factor is whether "inmates with serious mental or emotional illnesses or disturbances are provided reasonable access to medical personnel qualified to diagnose and treat such illnesses or disturbances." Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979). Here, plaintiff did not suffer from a serious or emotional illness. He was merely upset about the death of his aunt. Moreover, he was provided with reasonable access to a counselor on the very same day that he made the request. Therefore, accepting the plaintiff's allegations and statements as true, the defendants were not deliberately indifferent to serious medical needs of the plaintiff.

15. Plaintiff also claims that he filed a number of grievances in relation to all of the incidents discussed above and that those grievances were never processed. Claims that prison officials failed to respond to grievances filed by inmates are not cognizable under § 1983 because prisoners do not have a constitutional right to a grievance procedure. Hoover v. Watson, 886 F. Supp. 410, 418-19 (D.Del.)(citations omitted), aff'd, 74 F.3d 1226 (3d Cir. 1995); Hendrickson v. Emergency Medical Services, 1996 WL 472418 *5 n.5 (E.D.Pa. Aug. 20, 1996); Anderson v. Horn, 1996 WL 266109 *2 (E.D.Pa. May 17, 1996).

16. Because the plaintiff's claims are without legal merit,

plaintiff's request for the appointment of counsel is denied pursuant to the provisions of 28 U.S.C. § 1915(e)(1) and under the factors provided by Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993).

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.