

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

KIRK SEALE : CIVIL ACTION
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: :
v. : :
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: :
GOVERNOR TOM RIDGE, et al. : NO. 96-5522

O'Neill, J. November , 1998

MEMORANDUM

Plaintiff Kirk Seale, a prisoner of the Commonwealth of Pennsylvania, seeks declaratory judgment, injunctive relief, and monetary damages pursuant to 42 U.S.C.A. § 1983 for alleged violations of his rights under the Due Process Clause of the 14th Amendment.¹ He also sets forth a state law claim for conversion. Plaintiff brings this action against the Commissioner of the Department of Corrections, a Department of Corrections Hearing Examiner, the Superintendent at the State Correctional Institution at Graterford (SCI Graterford), and six SCI Graterford correctional officers (collectively “defendants”).

On August 30, 1996, plaintiff filed a *pro se* complaint against defendants. Defendants moved for judgment on the pleadings on April 25, 1997. This court subsequently appointed counsel to represent plaintiff and granted plaintiff leave to amend his complaint. The case is now before the court on defendants’ renewed motion for judgment on the pleadings pursuant to

¹ This Court has jurisdiction over plaintiff’s claims pursuant to 28 U.S.C.A. § 1331 (1993).

Federal Rule of Civil Procedure 12(c). For the reasons discussed below, I will grant defendant's motion as to plaintiff's claims under § 1983 and enter judgment in favor of the defendants.

Plaintiff's state law claim for conversion will be dismissed without prejudice to its being refiled in state court.

I.

Under Federal Rule of Civil Procedure 12(c), a court should not grant judgment on the pleadings "unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law." Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 290-91 (3d Cir. 1988), quoting Society Hill Civic Association v. Harris, 632 F.2d 1045, 1054 (3d Cir.1980). All well-pleaded facts contained in the non-moving party's pleadings must be accepted as true. DeBraun v. Meissner, 958 F. Supp. 227, 229 (E.D. Pa. 1997).

II.

Count I of plaintiff's First Amended Complaint alleges that plaintiff's procedural due process rights were violated when defendants took disciplinary action against him based solely on a drug test which they knew or should have known would produce unreliable results.² On January 17, 1996, a Drug and Alcohol screen urine test was administered to plaintiff. (Am. Compl. ¶ 17.) Plaintiff's urine tested positive for opiates. (Am. Compl. ¶ 18.) As a result plaintiff was charged with a drug-related misconduct. (Am. Compl. ¶ 22.) A misconduct hearing was held on January 24, 1996, and plaintiff was found guilty. (Am. Compl. ¶ 24.) He was

² Plaintiff does not claim that the urinalysis testing of inmates at state correctional institutions is a violation of the United States Constitution.

sentenced to sixty days in Disciplinary Segregation Custody (DSC).³ (Am. Compl. ¶ 30.) He also lost his job within the prison and was later transferred to the State Correctional Institution at Coal Township (“SCI Coal Township”) as a result of the January 17 drug test results. (Am. Compl. ¶¶ 31-32.) Plaintiff suffers from epilepsy and asserts that certain medications prescribed to control his seizures --not illegal drug use-- caused the positive test results. (Am. Compl. ¶ 14, ¶ 27.)

Though prisoners do not shed all constitutional rights at the prison gate, Wolff v. McDonnell, 418 U.S. 539, 555 (1974), the Due Process Clause does not protect every adverse change in the conditions of confinement. Meachum v. Fano, 427 U.S. 215, 224 (1976). At issue here is whether plaintiff was deprived of a constitutionally protected interest by defendants’ actions and, if so, what process he was entitled to prior to such actions.

Plaintiff’s disciplinary confinement, loss of work assignment, and prison transfer do not trigger the protections of the 14th Amendment’s Due Process clause.⁴ In Sandin v. Conner the Supreme Court held that disciplinary confinement does not deprive an inmate of a liberty interest unless the conditions of his confinement impose “an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” 515 U.S. 472, 484 (1995). Plaintiff does not allege that his disciplinary confinement was in any way atypical or outside the range of

³ Plaintiff ultimately spent seventy-one days in DSC because he was held over in that unit pending his transfer to SCI-Coal Township on April 11, 1996.

⁴ Plaintiff does not allege that he was punished in retaliation for having exercised a constitutional right. According to his own allegations, he was punished as result of testing positive for opiates in the January 17 urine test.

Retaliation for exercising a constitutionally protected right does create an actionable claim under § 1983. Anderson v. Davila, 125 F.3d 148, 162 (3d Cir. 1997); White v. Napoleon, 897 F.2d 103, 111-12 (3d Cir.1990).

normal prison conditions.⁵ Nor does plaintiff have a constitutional right to work or to have a particular job while incarcerated in a state correctional facility. James v. Quinlan, 866 F.2d 627, 629-30 (3d Cir. 1989); Quinn v. Cunningham, 879 F. Supp. 25, 27 (E.D. Pa. 1995). Plaintiff also has no constitutionally protected interest in avoiding prison transfers. Olim v. Wakinekona, 461 U.S. 238, 244-48 (1983).

Count I also asserts that, considered collectively, the punishment imposed upon plaintiff violated due process requirements. However, plaintiff cites no authority for the proposition that disciplinary actions which individually do not concern constitutionally protected interests may, when considered collectively, trigger due process protection. Since Count I fails to assert the deprivation of a protected interest, defendants are entitled to judgment as a matter of law.

In Count II plaintiff alleges that he was deprived of personal property without due process of law. When plaintiff was transferred to DSC on January 31, 1996, his personal possessions were inventoried and sent to the property room. (Am. Compl. ¶¶ 35-37.) As of the date of his complaint, plaintiff's property had not yet been returned to him. (Am. Compl. ¶ 39.) Plaintiff admits that he had grievance procedures available to him but states that he was transferred before he could make use of these procedures. (Am. Compl. ¶ 59.) He asserts that defendants' have negligently or intentionally lost or destroyed his personal property. (Am. Compl. ¶ 56.)

These allegations also fail to establish a § 1983 claim. Negligent acts resulting in unintended injury to life, liberty, or property do not implicate the Due Process Clause. Daniels v. Williams, 474 U.S. 327, 328 (1986). Even an unauthorized, intentional deprivation of an

⁵ The Court of Appeals has held that disciplinary confinement for as long as 15 months does not deprive an inmate of a liberty interest and thus does not entitle him to procedural due process protection. Griffin v. Vaughn, 112 F.3d 703, 708 (3d Cir. 1997).

inmate's property will not give rise to a viable due process claim if a meaningful, post-deprivation remedy is available. Hudson v. Palmer, 468 U.S. 517, 533 (1984). For lost or destroyed inmate property, prison grievance procedures constitute an adequate post-deprivation remedy. Hudson, 468 U.S. at 536 n. 15; Diaz v. Coughlin, 909 F. Supp. 146, 150 (S.D.N.Y. 1995); Rambert v. Durant, No. CIV.A.95-5636, 1996 WL 253322 (E.D. Pa. May 10, 1996).

Plaintiff acknowledges that SCI-Graterford offers grievance procedures but states that he was transferred to SCI-Coal Township before he could make use of them. He does not allege that such procedures, if utilized, would have proved insufficient to the requirements of due process. Nor does he allege that grievance procedures at SCI-Coal Township were unavailable or insufficient in any way. Regardless of whether plaintiff availed himself of such procedures, he clearly had adequate, post-deprivation remedies available to him. Since the allegations set forth in Count II are insufficient to establish a due process violation, defendants are entitled to judgment as a matter of law.

In Count III plaintiff alleges that defendants violated his substantive due process right to bodily integrity by forcing him to submit to a Hair Fibre Drug and Alcohol Test. On March 9, 1996 plaintiff was randomly selected, along with a number of other inmates, to participate in a project involving the testing of hair samples. (Am. Compl. ¶ 40.) He asserts that the purpose of this project was to test a new and possibly more effective method of drug detection. (Am. Compl. ¶ 41.) Informed that this test was mandatory, plaintiff permitted defendants to take hair samples from his chest and arms. (Am. Compl. ¶¶ 43-44.) He never learned of the results. (Am. Compl. ¶ 46.)

Substantive due process protects those individual rights “which are so rooted in the

traditions and conscience of our people as to be ranked as fundamental.” Rochin v. California, 342 U.S. 165, 169 (1952). The protections of substantive due process have for the most part been accorded to matters concerning marriage, family, procreation and the right to bodily integrity. Albright v. Oliver, 510 U.S. 266, 271-72 (1994) (plurality opinion); see also Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992). (describing cases in which substantive due process rights have been recognized). Because “the guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended,” Collins v. Harker Heights, 503 U.S. 115, 125 (1992), the Supreme Court has directed that if a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process. County of Sacramento v. Lewis, 118 S. Ct. 1708, 1714 (1998), citing Graham v. Connor, 490 U.S. 386, 395 (1989).⁶

In the case at bar, an enumerated provision of the Bill of Rights, namely the Fourth Amendment, encompasses plaintiff’s claim in Count III of his Amended Complaint. The Fourth Amendment protects expectations of privacy. See Winston v. Lee, 470 U.S. 753, 758 (1985). Though some diminution of privacy is to be expected in prison, see Hudson, 468 U.S. 517

⁶ In the event that plaintiff had stated a constitutional claim not covered by a specific constitutional provision, then that claim would be analyzed under the rubric of substantive due process. Lewis, 118 S. Ct. at 1715. Substantive due process prevents the government from engaging in conduct which “shocks the conscience”. Id. at 1716-1718. Though this standard is imprecise, the Supreme Court has repeatedly emphasized that only the most egregious official conduct can be said to violate substantive due process. Id. at 1716, citing Collins, 503 U.S. at 129.

Plaintiff’s allegations clearly do not shock the conscience of the Court. Cutting a few strands of hair from an inmate’s chest and arms is not the type of egregious official conduct against which substantive due process protects.

(1984), courts have recognized that inmates do retain a constitutional right to bodily privacy. See Hayes v. Marriott, 70 F.3d 1144 (10th Cir. 1995); Canedy v. Boardman, 16 F.3d 183 (7th Cir. 1994); Fortner v. Thomas, 983 F.2d 1024 (11th Cir. 1993); Corvino v. Patrissi, 967 F.2d 73 (2d Cir. 1992); Sepulveda v. Ramirez, 967 F.2d 1413 (9th Cir. 1992). It is also well established that drug testing programs entail “searches” within the meaning of the Fourth Amendment.

However, institutional security may necessitate the limitation of inmates’ constitutional rights. Bell v. Wolfish, 441 U.S. 520, 545-46 (1979). For this reason courts must grant wide-ranging deference to prison officials “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. at 547. Thus, when a prison regulation impinges on inmates’ constitutional rights, that regulation is valid if it is reasonably related to legitimate penological interests such as institutional security. Lewis v. Casey, 518 U.S. 343, 361-62 (1996); Washington v. Harper, 494 U.S. 210, 223-24 (1990), citing Turner v. Safley, 482 U.S. 78, 89 (1987).

Since drugs constitute a serious threat to institutional security, prisons have a legitimate interest in detecting, deterring, and eradicating drug use. Hudson, 468 U.S. at 526-27; Storms v Coughlin, 600 F. Supp. 1214, 1220-24 (S.D.N.Y. 1984). Courts have upheld intrusive security procedures such as body cavity searches, Wolfish, 441 U.S. at 557-58; Covino, 967 F.2d at 79-80, and random urinalysis testing, Lucero v. Gunter, 17 F.3d 1347, 1350 (10th Cir. 1994) (collecting cases); Beckwith v. Lehman, No. CIV.A.93-6162, 1994 WL 263333 (E.D. Pa. June 10, 1994). Nevertheless, bodily intrusions for the purpose of detecting narcotics must be conducted in a reasonable manner. Wolfish, 441 U.S. at 558.

Here, plaintiff does not challenge the proposition that drugs are a major security problem for prisons. Nor does he allege that the hair fiber test was conducted in an unreasonable manner or that the test was so intrusive as to be unreasonable. In fact, plaintiff concedes that snipping hair from the chest and arms is less intrusive than body cavity searches or urine tests. Plaintiff does contend, however, that the hair and fibre test had no rational relationship to institutional security. He asserts that samples of his hair were tested not to maintain a secure facility but to assess the effectiveness of an alternative method of drug testing. He argues that since the test was administered for research purposes, it did not further any legitimate penological interest.

In support of this contention, plaintiff cites Tucker v. Dickey, 613 F. Supp. 1124 (E.D. Wis. 1985). In Tucker the court denied a motion for summary judgment because it found that material issues of fact existed regarding whether an anonymous drug testing program was constitutional. Id. The alleged purpose of that program was to gather information on the extent of drug use in Wisconsin prisons. Id. at 1129. Defendants stated that corrections officials intended to use this data in dealing with inmate drug use but offered no information as to how such information would be used to improve institutional security. Id. As a result, the court concluded it was unable to determine whether the drug testing program had a “substantial security purpose” which would entitle it to deference. Id. at 1129-30.

Unlike Tucker, plaintiff’s allegations in this case establish that the drug testing program was rationally related to institutional security. Here, the drug testing program was implemented not to compile statistical evidence but to assess a new and possibly more effective method of drug testing. Such a purpose bears a clear and direct relation to legitimate penological interests. More effective drug testing methods enhances an institution’s ability to detect and to deter drug

use and thus helps efforts to combat a recognized and serious threat to institutional security.

Moreover, I find Tucker unpersuasive insofar as it maintains that deference to corrections officials is required only if a court finds that the prison regulation at issue has a substantial security purpose. Id. at 1128-30. I believe that Wolfish and subsequent decisions grant greater discretion to corrections officials. The Supreme Court has repeatedly instructed that prison officials should be afforded “wide-ranging deference” in matters they deem necessary to institutional security, Wolfish, 441 U.S. at 547; see also Lewis, 518 U.S. at 361-63; Washington, 494 U.S. at 223-27; Turner, 482 U.S. at 88-90, because issues of prison security and administration are “peculiarly within the province and professional expertise of corrections officials” and ill-suited to judicial determination. Wolfish, at 548, n.30. Such a deferential standard is necessary, the Court explained, “if prison administrators ..., and not the courts [are] to make the difficult judgments concerning institutional operations.” Turner, 482 U.S. at 89, quoting Jones v. North Carolina Prisoners’ Labor Union, Inc., 433 U.S. 119, 128 (1977). Accordingly, courts should strike down a prison policy or practice only if it has no rational relationship to legitimate penological concerns. See Lewis, 518 U.S. at 361-63; Turner, 482 U.S. at 89.

Since the Hair Fibre test challenged by plaintiff does bear a rational relationship to institutional security, it does not violate the requirements of substantive due process. Defendants are therefore entitled to judgment as a matter of law.

III.

Finally, plaintiff argues that the Amended Complaint raises a state law claim for conversion. Because I have dismissed the federal claims upon which original jurisdiction was

based and discern no compelling reason at this early stage of the litigation to continue to entertain a state law claim, I will decline to exercise supplemental jurisdiction over this claim for conversion. See 28 U.S.C. § 1367(c); Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277, 1284-85 (3d Cir.1993).

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ORDER

AND NOW this day of November, 1998, upon consideration of defendants' renewed motion for judgment on the pleadings and plaintiff's response thereto, it is hereby ORDERED that defendants' motion is GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED THAT:

- 1.) plaintiff's claims under § 1983 are DISMISSED WITH PREJUDICE; and
- 2.) plaintiff's state law claim for conversion is DISMISSED WITHOUT PREJUDICE.

As to plaintiff's claims under § 1983, judgment is entered in favor of defendants, Governor Tom Ridge, et al., and against plaintiff, Kirk Seale.

THOMAS N. O'NEILL, JR. J.

