

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

WAYNE BECKWITH : CIVIL ACTION
and DARYL COOK :
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 v. :
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 JOSEPH D. LEHMAN : NO. 93-6162

O'Neill, J. September , 1999

MEMORANDUM

Plaintiff Daryl Cook, an inmate in the custody of the Pennsylvania Department of Corrections, brings this civil action pursuant to 42 U.S.C. § 1983 against defendant Joseph D. Lehman, the former commissioner of the Department.¹ In the complaint, plaintiff alleges two separate claims arising out of two unrelated incidents which occurred during his incarceration at the State Correctional Institution at Frackville (SCI-Frackville) and defendant's tenure as commissioner. Plaintiff's first claim alleges that defendant violated plaintiff's due process rights under the Fourteenth Amendment by failing to give prior notice of a Department policy instituting random urinalysis testing of inmates. The second alleges that defendant violated plaintiff's Eighth Amendment rights by failing to protect plaintiff from attacks by other inmates.

Now before this Court is defendant's motion for summary judgment. For the following reasons I will grant defendant's motion and order judgment for defendant and against plaintiff.

¹ By a stipulation entered on May 11, 1994, plaintiff Wayne Beckwith voluntarily dismissed his claims pursuant to Federal Rule of Civil Procedure 41.

I.

On July 30, 1993, the Department of Corrections established a policy “to periodically obtain urine specimens from inmates to monitor drug usage by means of urinalysis.” Procedures for On-Site Drug and Alcohol Screens, Policy No. 6.3.12 , at 2. The stated purpose of this policy was to improve prison security and inmate safety. Id. at 1-2.

On October 31, 1993, two correctional officers entered plaintiff’s cell and informed him that he was required to provide a urine sample for drug screening purposes. Plaintiff was then taken to a nearby room and ordered to produce a sample. Since plaintiff was not aware of any Department of Corrections policy requiring inmates to undergo urinalysis drug testing, he refused to comply with this order. One of the correctional officers then informed plaintiff that if he did not provide a urine sample, he would be charged with a misconduct. Plaintiff again refused to supply the requested sample and was then issued a misconduct report charging him with refusing to obey an order. At a disciplinary hearing on November 2, 1993, plaintiff pled guilty to a class I misconduct. Disciplinary Hearing Report, Part IIB. His punishment consisted of restriction to his cell for 30 days. Id.

At the time of this incident plaintiff was aware both that possession and use of illegal drugs is prohibited and that an inmate who refuses to obey a correctional officer’s order can be charged with misconduct. Plaintiff’s Deposition at 9-10, 18.

In March of 1994, plaintiff was placed in the Restrictive Housing Unit (RHU) at SCI-Frackville as a result of being found guilty of multiple misconducts. On March 24, after an argument with Timothy Schofield, another inmate in the RHU, plaintiff submitted a request to the

superintendent for an emergency transfer. In the request plaintiff stated that he feared for his safety after being labeled as a snitch by other inmates but made no reference to Schofield or to any other particular inmate. The superintendent did not receive this request for emergency transfer until March 28. Inmate's Request to Staff Member.

The following morning, March 25, Sergeant Roger Heidelbaugh and Correctional Officer John Bretzik placed plaintiff in handcuffs and escorted him to the RHU exercise yard. At this time Schofield was also handcuffed and escorted to the yard. The RHU exercise yard at SCI-Frackville contained three cages, each entirely enclosed by metal fencing. During exercise periods inmates in the RHU are handcuffed and then placed in these cages, either alone or in pairs. Their handcuffs are then removed, one at a time, through an opening in the fence. After placing plaintiff and Schofield inside one of these cages on the morning in question, the correctional officers then removed Schofield's handcuffs through an opening in the fencing. Once free, Schofield assaulted plaintiff, who was still handcuffed, punching him several times in the face and body. Sgt. Heidelbaugh immediately sent CO Bretzik to the RHU Control Center to report that a fight had broken out and repeatedly ordered Schofield to stop hitting plaintiff. While awaiting the arrival of additional correctional officers, Sgt. Heidelbaugh did not attempt to intervene physically in the assault. After five to eight minutes, additional officers arrived and Schofield ceased his assault. Plaintiff was then treated by medical personnel for various abrasions and lacerations.

At no point prior to the assault did plaintiff indicate to the corrections officers that he believed he was in danger or that he did not want to be placed in an exercise cage with Schofield. At no point prior to the assault did Schofield say or do anything which was hostile or threatening. Plaintiff and Schofield were not subject to any formal separation order which would have prohibited

corrections officers from placing the two inmates in the same exercise cage. Decl. of R. Heidelbaugh, ¶¶ 9, 11, 13.

II.

Summary judgment is appropriate “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 a judgment as a matter of law.” Fed. R. Civ. P. 56(c).

The party moving for summary judgment must state the basis for its motion and identify those portions of the record which it believes indicate the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). When the moving party does not bear the burden of persuasion at trial, it may properly support its motion merely by showing that there is an absence of evidence to support the non-moving party’s case. Id. at 325.

In response to a properly supported motion for summary judgment, the non-moving party must point to specific facts demonstrating that a genuine issue for trial exists. Fed. R. Civ. P. 56(e). It may not rest upon unsupported allegations or denials. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). In order to demonstrate the existence of a genuine issue of material fact, the non-moving party must raise more than a “mere scintilla of evidence;” it must produce evidence on which a jury could reasonably find in its favor. Id. at 248, 252.

When considering a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-moving party. Id. at 255. Moreover, a court may not consider the credibility or weight of the evidence in making its determination. Id.

III.

Plaintiff does not contest the constitutionality of the Department's policy and procedures regarding urinalysis drug screening of inmates. Rather, he alleges that he did not receive adequate notice of this policy as required by the due process clause of the Fourteenth Amendment.

“Due process requires that inmates receive fair notice of a rule before they can be sanctioned for its violation.” Forbes v. Trigg, 976 F.2d 308, 314 (7th Cir. 1992). However, “due process does not require that prior notice be given of the techniques through which noncompliance will be tested.” United States v. Duff, 831 F.2d 176, 179 (9th Cir. 1987) (finding no due process violation where probationer was not given notice that he would be subject to periodic urinalysis drug testing prior to being tested but was on notice that drug use was a violation of the conditions of his probation).

Here, plaintiff was aware that he was prohibited from using illegal drugs. That he was allegedly unaware of any policy regarding urinalysis testing of inmates –one of the techniques through noncompliance with that prohibition was to be tested– raises no due process concerns. Moreover, plaintiff did in fact receive adequate notice. Corrections officers informed him that he was subject to urinalysis testing, explained the consequences of refusing to cooperate, and gave him a chance to comply with their orders before charging him with misconduct. At the time of this incident plaintiff was aware that an inmate could be charged with misconduct for refusing to obey a corrections officer's order.

Plaintiff's second claim alleges that defendant violated the Eighth Amendment by failing to take reasonable measures to protect plaintiff from violence at the hands of other inmates. To prevail on this claim, plaintiff must show that he was incarcerated under conditions posing a substantial risk of serious harm and that defendant knew of and yet deliberately disregarded that risk. Hamilton v.

Leavy, 117 F.3d 742, 746 (3d Cir. 1997). Thus, to survive defendant's motion for summary judgment, plaintiff must "produce sufficient evidence of (1) a substantial risk of serious harm; (2) the defendant's deliberate indifference to that risk; and (3) causation. Id.

Plaintiff does not appear to contend that defendant knew of any risk to plaintiff posed by Schofield or by any other inmate in the RHU. In any case he does not offer any evidence to show that defendant had knowledge of such a risk. Instead, plaintiff asserts that a policy prohibiting correctional officers from intervening in assaults between inmates until the arrival of sufficient back-up creates a substantial risk of serious harm to inmate health and safety. By allowing that policy to continue, plaintiff contends, defendant has demonstrated a deliberate indifference to that risk. Plaintiff, however, does not support these contentions with evidence. He does not offer any evidence showing that the DOC policy at issue did in fact create a substantial risk to inmate safety of which defendant was aware. The only incident offered by plaintiff to demonstrate the substantial risk of such a policy is the assault at issue here. Although plaintiff cites to several cases involving assaults on handcuffed inmates by other inmates, those assaults did not involve the specific policy at issue here nor policies which are similar in nature. Moreover, plaintiff offers no evidence showing that defendant was even aware of the assaults alleged in those cases, all of which took place outside of Pennsylvania and most of which occurred after the date of the incident in question.

Since I find that no genuine issues of material fact remain and that defendant is entitled to judgment as a matter of law as to both claims, I will grant defendant's motion for summary judgment. An appropriate Order follows.

