

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

GREGORY ALEX DEMETER : CIVIL ACTION
: :
v. : :
: :
TODD BUSKIRK, et al. : NO. 03-1027

MEMORANDUM

Padova, J.

October 20, 2003

Pro se Plaintiff Gregory Alex Demeter brings this action under 42 U.S.C § 1983 against Defendants Todd Buskirk and Scott Hoke, both of whom are officials of the Northampton County Prison ("Prison") in Easton, Pennsylvania, for alleged violations of his federal and state constitutional rights while he was incarcerated as a convicted prisoner. Defendants filed a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the matter has been briefed by both parties. For the reasons that follow, the Court grants Defendants' Motion for Summary Judgment in its entirety.

I. RELEVANT BACKGROUND

On November 14, 2002, Plaintiff was arrested for leaving Pottstown After-Counseling Associates, the facility at which he had been housed on parole from a conviction in the Court of Common Pleas of Northampton County for driving under the influence and receipt of stolen property. (Demeter Dep. at 5). On January 7, 2003, Plaintiff appeared before Judge Kimberly McFadden of the Court of Common Pleas of Northampton County for sentencing on the

parole violation. Neither Defendant to the instant case attended the sentencing proceeding before Judge McFadden. (Def. Mot. at 2; Demeter Aff. ¶ 12). At the close of the hearing, Judge McFadden instructed her clerk to prepare an order stating that Plaintiff "is to max out in work release, immediately in work release. And he is to get a mental health evaluation and treatment while in work release." (1/7/03 N.T. at 6). The sentence was reduced to writing on an undated sentencing sheet, which contained the following handwritten statement under a preprinted heading entitled "General Remarks": "Max out work release, mental health treatment and evaluation while in work release." (Def. Ex. C). Although the sentencing sheet listed "Immediate Work Release" in typewritten text as a sentencing option, the box adjacent to this boilerplate language was left unchecked.

On or about January 7, 2003, Defendant Buskirk, who serves as the Northampton County Prison ("Prison") Warden, received Plaintiff's sentencing sheet from the Court of Common Pleas of Northampton County. (Buskirk Aff. ¶ 5). After meeting with Judge McFadden on or about January 8 or 9, 2003 to clarify the terms of Plaintiff's work release sentence, Defendant Buskirk ordered Plaintiff to undergo a Minnesota Multiphasic Personality Inventory ("MMPI") test, to be administered by Dr. Richard A. Weiss, a clinical psychologist at the Prison. On January 16, 2003, Plaintiff underwent the MMPI test. (Buskirk Aff. ¶ 7). On January

20, 2003, Dr. Weiss submitted a report indicating that Plaintiff had passed the MMPI test and recommending that Plaintiff be considered for immediate work release. (Buskirk Aff. ¶7). On January 22, 2003, Defendant Buskirk classified Plaintiff to work release. (Def. Ex. D, Buskirk Aff. ¶ 8).

Plaintiff alleges that Defendants violated his procedural due process rights by failing to provide him with meaningful post-deprivation procedures to appeal the decision not to classify him to immediate work release. Plaintiff also asserts a substantive due process claim alleging that Defendant Buskirk arbitrarily and capriciously meet with Judge McFadden for the purpose of demanding that she change her work release order. Finally, Plaintiff contends that Defendants violated his equal protection rights and his rights to be free from cruel and unusual punishment by not immediately classifying him to work release.

II. LEGAL STANDARD

Summary Judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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) ("Rule 56"). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A

factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. "[T]he judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the

plaintiff on the evidence presented." Id. at 252. "If the opponent [of summary judgment] has exceeded the 'mere scintilla' [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. DISCUSSION

A. Defendant Scott Hoke

Defendants argue that the Court should grant summary judgment in favor of Defendant Scott Hoke, who serves as a Deputy Warden of Classification at the Prison, because he did not personally participate in any of the decisions made concerning Plaintiff's work release classification. In support of this contention, Defendants submit the affidavit of Defendant Buskirk, which states that "Defendant Hoke . . . was not personally involved in the decision-making process with respect to plaintiff's work release in January, 2003." (Def. Ex. D, Buskirk Aff. ¶ 10). Notably, Plaintiff's Complaint makes no individualized factual allegations against Defendant Hoke. Plaintiff also admitted at his deposition that he only "used [Hoke] as a defendant because him [sic] and the warden basically are in the same position." (Demeter Dep. at 16).

"A defendant in a civil rights action must have personal involvement in the alleged wrongs' to be liable." Sutton v.

Rasheed, 323 F.3d 236, 249 (3d Cir. 2003) (quoting Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988)). There exists no genuine issue as to Defendant Hoke's lack of personal involvement in the decision-making process surrounding Plaintiff's work release classification. Accordingly, Defendant Hoke is entitled to summary judgment as a matter of law.

B. Defendant Todd Buskirk

1. Plaintiff's procedural due process claim

Plaintiff asserts that Defendant Buskirk violated his procedural due process rights by not providing him with procedures to appeal the decision not to immediately classify him to work release.

In order to establish a due process claim, a plaintiff must, inter alia, establish the existence of a protected liberty or property interest. Unger v. National Residents Matching Program, 928 F.2d 1392, 1395 (3d Cir. 1991). A protected liberty interest may arise only from the Due Process Clause or state laws. Asquith v. Dept. of Corrections, 186 F.3d 407, 409 (3d Cir. 1999) (citing Hewitt v. Helms, 459 U.S. 460, 466 (1983)). In Sandin v. Conner, 515 U.S. 472 (1995), the United States Supreme Court stated that a protected liberty interest is created under the Due Process Clause only where a prisoner's freedom from restraint "exceed[s] the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force." Id. at 484. As

examples, the Sandin Court cited Vitek v. Jones, 445 U.S. 480 (1980), where the Court held that the Due Process Clause conferred a protected liberty interest on a prisoner involuntarily transferred to a state mental hospital since the transfer was "qualitatively different" from punishment suffered by convicted prisoners, and Washington v. Harper, 494 U.S. 210 (1990), where the Court found a Due Process-based liberty interest in being protected from involuntary administration of psychotropic drugs. Sandin, 515 U.S. at 484. No reasonable jury could find that Plaintiff's deprivation of, at the very most, fifteen days of work release exceeded his sentence in a manner as unexpected as the conduct in Vitek and Washington. Accordingly, the Due Process Clause does not confer upon Plaintiff a protected liberty interest in fifteen days of work release.

The Sandin Court also held that state-created liberty interests "are generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Id. at 484. "The baseline for determining what is 'atypical and significant' - the ordinary incidents of prison life - is ascertained by what a sentenced inmate may reasonably expect to encounter as a result of his or her conviction in accordance with due process law." Asquith v. Dept. of Corrections, 186 F.3d 407, 412 (3d Cir. 1999) (quoting Griffin v. Vaughn, 112 F.3d 703, 706 & n.2 (3d Cir. 1997)). During

the 15-day delay in classifying Plaintiff to work release, Plaintiff remained in prison full-time instead of leaving the prison each day to work. Since an inmate is normally incarcerated in prison, the modest delay in classifying Plaintiff to work release did not impose atypical and significant hardship on him in relation to the ordinary incidents of prison life. Thus, even if Judge McFadden indisputably ordered immediate work release for Plaintiff, no reasonable jury could find that a protected liberty interest in work release was conferred by the Judge's sentencing order. Accordingly, Defendant Buskirk was not constitutionally required to provide Plaintiff with any procedure for appealing the decision not to immediately classify Plaintiff to work release.

Even assuming that Plaintiff has a protected liberty interest in the fifteen days of work release, Defendant Buskirk would still be entitled to summary judgment based on qualified immunity. The United States Supreme Court held in Harlow v. Fitzgerald, 457 U.S. 800 (1982) that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Id. at 818. In determining whether qualified immunity applies, a court considers "whether a reasonable public official would know that his or her specific conduct violated clearly established rights." Grant v. City of Pittsburgh, 98 F.3d

116, 121 (3d Cir. 1996)(citing Anderson v. Creighton, 483 U.S. 635, 636-37 (1996))(emphasis in original).

According to Defendant Buskirk's affidavit, Judge McFadden advised him that Plaintiff could undergo an updated psychological evaluation before being classified to work release.¹ (Buskirk Aff. ¶ 6). In these circumstances, a reasonable public official would not believe that the administration of psychological testing - as authorized by the sentencing judge - prior to classifying Plaintiff to work release would violate Plaintiff's constitutional rights. Defendant Buskirk is therefore entitled to qualified immunity. Accordingly, Defendant Buskirk's motion is granted with respect to Plaintiff's procedural due process claim.

¹ Plaintiff does not dispute that Defendant Buskirk met with Judge McFadden concerning the terms of Plaintiff's work release. Instead, Plaintiff takes issue with Defendants' submission that, at the meeting, Defendant Buskirk received authorization from Judge McFadden to subject Plaintiff to psychological testing prior to his work release classification. Plaintiff contends that, on the contrary, Judge McFadden informed Defendant Buskirk that Plaintiff should be immediately classified for work release. Plaintiff appears to base his contention on statements by Judge McFadden during the sentencing hearing that Plaintiff "is to max out in work release, immediately in work release." (1/7/03 N.T. at 6). Although Defendant Buskirk did not attend the sentencing hearing, Plaintiff presumes that Judge McFadden reiterated her desire to immediately classify Plaintiff for work release during her subsequent meeting with Defendant Buskirk. He further appears to imply this conclusion from the fact that Judge McFadden formally modified neither her statements on the record nor the terms of the Sentencing Sheet prepared immediately after the sentencing hearing. Mere speculation regarding the meeting between Judge McFadden and Defendant Buskirk, however, is insufficient to rebut Defendant Buskirk's affidavit.

2. Plaintiff's substantive due process claim

Plaintiff claims that Defendant Buskirk violated his substantive due process rights by arbitrarily and capriciously meeting with Judge McFadden in order to demand that Plaintiff undergo psychological testing prior to being classified to work release. Plaintiff contends that Defendant Buskirk admitted that he met with Judge McFadden without first reviewing Plaintiff's MMPI test results from May 2002, presumably the most recent prior psychological evaluation of Plaintiff. (Demeter Aff. ¶ 23). Plaintiff claims that Defendant Buskirk had informed him that his MMPI test results from May 2002 would be valid for one year. (Demeter Aff. ¶ 24). Based on these alleged admissions by Defendant Buskirk, Plaintiff is convinced that Defendant sought permission from Judge McFadden to authorize the MMPI test that Plaintiff underwent in January 2003 for the sole purpose of delaying Plaintiff's work release classification.

In Block v. Potter, 631 F.2d 233 (3d Cir. 1980), a divided panel of the United States Court of Appeals for the Third Circuit ("Third Circuit") held that, even though prison inmates had no liberty interest in parole release protected by the Due Process Clause, a fundamental due process right to be free from "capricious decisionmaking" still protected such prisoners from "arbitrary governmental action." Id. at 236. Thus, the Block court held that "[a]lthough...a state may condition the expectation of parole, or

even deny it completely, a state statute may not sanction totally arbitrary parole decisions founded on impermissible criteria." Id.

Block is distinguishable from the instant case, however. In Block, the court held that the Board of Parole had impermissibly used race as a factor in its decision to deny the plaintiff parole. The Court reasoned that "[r]ace is an impermissible criteria in the parole decisionmaking process, absent the most compelling sort of governmental justification Thus, to the extent that it considered [the plaintiff's] race as a reason for denying his parole application, the Board deprived him of due process." Block, 631 F.3d at 238.

Thus, although some of the language in Block speaks of a broad right to challenge unfavorable determinations based solely on a due process right to be free from arbitrary or capricious decision-making, the court's actual holding invalidated the Board of Parole's denial of parole because of its reliance upon race as a factor in its decision. In the instant case, Plaintiff does not contend that Defendant Buskirk's decisions concerning classification of Plaintiff to work release were at all motivated by race. Furthermore, Block concerned the denial of parole, not the denial of work release.² This Court has found no case which

² There is, of course, a significant difference between work release and parole. Specifically, parole determinations are considered to relate to the duration of one's confinement, while work release determinations generally relate only to the conditions of one's confinement. See Asquith v. Volunteers of America, 1 F.

has applied the holding of Block to the denial of work release, as opposed to the denial of parole.³ Thus, the Court concludes that no reasonable jury could find that Plaintiff's substantive due process rights were violated based solely upon the alleged arbitrary and capricious decision-making of Defendant Buskirk in delaying his work release classification.

Furthermore, even if the Court were to acknowledge that Plaintiff has a substantive due process right to be free from arbitrary and capricious decision-making in the context of denial of work release, that right was not clearly established when the conduct complained of took place. Indeed, as discussed above, there is no clear statement from the Third Circuit extending the substantive due process right to be free from arbitrary and capricious decision-making to the context of denial of work release. Accordingly, Defendant Buskirk's motion is granted with respect to Plaintiff's substantive due process claim.

Supp. 2d 405,416 (D. N.J. 1998) (holding that cases establishing liberty interest in parole eligibility were inapplicable to work release context), aff'd sub nom. Asquith v. Dept. of Corrections, 186 F.3d 407 (3d Cir. 1999).

³ Indeed, many courts, including panels of the Third Circuit, have called Block's reasoning into question. See, e.g., Independent Enterprises v. Pittsburgh Water and Sewer Auth., 103 F.3d 1165, 1179 (3d Cir. 1997) ("[A] substantive due process claim grounded in an arbitrary exercise of governmental authority may be maintained only where the plaintiff has been deprived of a 'particular quality of property interest.'") (quoting DiBlasio v. Zoning Bd. of Adjustment, 53 F.3d 592, 600 (3d Cir. 1995)).

C. Plaintiff's equal protection claim

Plaintiff claims that Defendant Buskirk, in delaying the decision to classify Plaintiff to work release, violated his constitutional rights under the Equal Protection Clause of the Fourteenth Amendment. Specifically, Plaintiff alleges that Defendant Buskirk's decision not to immediately classify him to work release was made in retaliation for the numerous lawsuits and other grievances Plaintiff had filed against Defendant Buskirk. Plaintiff's Complaint lists the names of other inmates at the Prison who were immediately placed in work release by Defendant Buskirk without even being subjected to the classification process. (Compl. ¶ 23). Presumably, these inmates did not have a history of filing lawsuits or other grievances against Defendant Buskirk.

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction from intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (quoting Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445 (1918)). Although challenges under the Equal Protection Clause are typically brought on behalf of a vulnerable class or group, the Supreme Court has recognized successful equal protection claims "brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated

differently from others similarly situated and that there is no rational basis for the difference in treatment." Id. Thus, to prevail on his equal protection challenge, Plaintiff must prove that Defendant Buskirk intentionally treated him differently from other similarly situated prisoners by not immediately classifying him to work release, and that there existed no rational basis for this difference in treatment.

Plaintiff's equal protection claim fails because there is no real evidence in the record that Defendant Buskirk intentionally discriminated against Plaintiff. Discriminatory intent "implies that the decisionmaker . . . selected or reaffirmed an action at least in part 'because of' and not merely 'in spite of' its adverse effects upon an identifiable group" or person. Hayden v. Grayson, 134 F.3d 449, 454 (1st Cir. 1998). Vague and unsubstantiated allegations about Defendant Buskirk's motivation for treating Plaintiff differently than some of the other inmates falls far short of satisfying the "onerous" burden of proving discriminatory intent. Id. Furthermore, because Defendant Buskirk was acting pursuant to the terms of the sentencing sheet, as clarified by the sentencing judge in meeting with him, a rational basis existed for any difference in the treatment of Plaintiff. No reasonable jury, therefore, could find that Defendant Buskirk violated Plaintiff's equal protection rights. Accordingly, Defendant Buskirk's Motion for Summary Judgment is granted with respect to Plaintiff's equal

protection claim.

D. Plaintiff's cruel and unusual punishment claim

Plaintiff claims that Defendant Buskirk's decision to not immediately classify Plaintiff to work release constituted cruel and unusual punishment under the Eighth Amendment. The Cruel and Unusual Punishment Clause of the Eight Amendment prohibits "punishments which are incompatible with the evolving standards of decency that mark the progress of a maturing society." Estelle v. Gamble, 429 U.S. 97, 102 (1976). No reasonable jury could find that a fifteen-day delay in classifying Plaintiff to work release while he underwent psychological testing, which was preauthorized by the sentencing judge, amounts to a cruel and unusual punishment. Accordingly, Defendant Buskirk's Motion for Summary Judgment on Plaintiff's Eighth Amendment claim is granted.

E. Plaintiff's pendent state law claims

Plaintiff claims that Defendants' delay in classifying him to work release violated his rights under the Pennsylvania Constitution. Federal courts have the power to exercise pendent jurisdiction over state law claims that are "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367 (a). State claims are "so related" to federal claims when they "derive from a common nucleus of operative fact." United Mine Workers of America v. Gibbs, 383

U.S. 715, 725 (1966). Pendent jurisdiction, however, "is a doctrine of discretion, not of plaintiff's right." Id. at 726. Indeed, "if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." Id. Having granted Defendants' Motion for Summary Judgment in its entirety, the Court declines to exercise pendent jurisdiction over Plaintiff's state law claims. Accordingly, Plaintiff's state law claims are dismissed.

IV. CONCLUSION

For the foregoing reasons, the Court grants Defendants' Motion for Summary Judgment in its entirety. An appropriate order follows.

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ORDER

AND NOW, this 20th day of October, 2003, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 27), Plaintiff's response thereto (Docket No. 41), and all related submissions, **IT IS HEREBY ORDERED** that Defendants' Motion is **GRANTED** in its entirety. Judgment is entered in favor of Defendants and against Plaintiff. This case shall be closed for statistical purposes.

BY THE COURT:

John R. Padova, J.