

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

ANTHONY M. JOHNSON : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA : NO. 02-9486

MEMORANDUM

Fullam, Sr. J. January , 2004

Plaintiff, a state prisoner confined in the Curran-Fromhold Correctional Facility, brought this civil action contending that the living conditions at that facility did not measure up to constitutional standards, and constituted violations of the Eighth Amendment. The defendant filed a Motion for Summary Judgment, to which plaintiff has not filed a response. The case is listed for trial commencing January 12, 2004.

It appears that, at times, the number of prisoners incarcerated at the Curran-Fromhold facility is greater than can be accommodated in the normal two-man cells. At such times, some prisoners are housed in multi-purpose rooms, which accommodate six prisoners, but which do not have toilet or washing facilities. Prisoners in the multi-purpose rooms are required to use a nearby cell which has been converted into a bathroom, and plaintiff alleges that it is sometimes necessary for prisoners to wait in line before gaining access to the bathroom. Plaintiff

also charges that the shower facilities are inadequate (five showers to accommodate 24 prisoners).

In the prison grievances filed by plaintiff, and also in the main body of his complaint in this action, plaintiff sought merely to be transferred from a multi-purpose room to a regular cell. He asserted that such transfers were supposed to be based upon reverse seniority - i.e., those who had been in the multi-purpose rooms longest would receive the next transfer to a regular cell - but that his seniority rights were not recognized. The complaint does, however, also seek an award of damages for the perceived constitutional violations as well as a transfer to better accommodations.

I have carefully reviewed the entire record, with particular attention to plaintiff's deposition, and am satisfied that the conditions complained of do not, as a matter of law, constitute cruel and unusual punishment in violation of the Eighth Amendment. The conditions described by plaintiff amount, at most, to proof that, because of over-crowding and the actions of other inmates, plaintiff's stay was not as comfortable as it might have been, and that the work details assigned to cleaning up trash were not always efficient. But all of plaintiff's needs were attended to, he was permitted outside his cell several times during each day, and he suffered no physical detriment of any kind. Plaintiff simply cannot meet the requirements for Eighth

Amendment violations set forth in such cases as *Rhodes v. Chapman*, 452 U.S. 337 (1981) and *Tillery v. Owens*, 905 F.2d 418 (3d Cir. 1990). Moreover, by the time plaintiff's deposition was taken on October 30, 2003, he was no longer exposed to the conditions about which he complains; his failure to respond to the summary judgment motion suggests the absence of a live controversy.

For the foregoing reasons, defendant's Motion for Summary Judgment was, by this Court's Order of January 8, 2004, granted.