

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

JAMES BURTON,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PENNSYLVANIA BOARD OF	:	
PROBATION & PAROLE, et al.,	:	
	:	
Defendants.	:	No. 02-2573

MEMORANDUM AND ORDER

On December 20, 2004, this court granted defendants’ motion for summary judgment on James Burton’s retaliation and hostile work environment claims, dismissing those claims.¹ Defendants now move for summary judgment on Burton’s remaining discrimination claim.

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.” F.R.C.P. 56(c). The moving party bears the initial burden of showing that there is no genuine issue of material fact. Highlands Ins. Co. v. Hobbs Group LLC, 373 F.3d 347, 350-51 (3d Cir. 2004). Once the moving party has carried its burden, the nonmoving party must come forward with specific facts to show that there is a genuine issue for trial. Williams v. West Chester, 891 F.2d 458, 464 (3d Cir. 1989). A fact is “material” if its resolution will affect the

¹ In his memorandum opposing defendants’ motion for summary judgment on the remaining discrimination claim, Burton appears to reassert his hostile work environment claim. Pl.’s Mem. Opp. S. J., at 24 (stating that “the jury may find that the discrimination was so systemic as to create a hostile work environment.”). Because this court has previously dismissed Burton’s hostile work environment claim, Burton v. Pennsylvania Bd. of Probation & Parole, No. Civ. A. 02-2573, 2004 WL 2943725 (E.D.Pa. Dec. 20, 2004), this court need not entertain that claim again.

outcome under the applicable law, and an issue about a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The court must draw all justifiable inferences in favor of the nonmoving party. Highlands Ins. Co., 373 F.3d at 351.

In order to establish a prima facie case of discrimination,² a plaintiff must show that: (1) he is a member of a protected class; (2) he was qualified for his position; (3) he suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to an inference of discrimination. Jones v. School District of Philadelphia, 198 F.3d 403, 410-11 (3d Cir. 1999). If the plaintiff establishes a prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the adverse action. Id. at 410. If the defendant carries this burden, the plaintiff must then show that the proffered reason was a pretext for discrimination. Id. The plaintiff can prove pretext by presenting evidence that: (1) casts sufficient doubt upon each of the legitimate reasons proffered by the defendant so that a finder of fact could reasonably conclude that each reason was a fabrication; or (2) allows a finder of fact to infer that discrimination was more likely than not a motivating or determinative cause of the employment action. Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994).

Defendants do not argue that Burton, a black male, cannot make out a prima facie case of

² Burton raises a claim of discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., the Pennsylvania Human Relations Act (“PHRA”), 43 Pa.C.S.A. § 951, et seq., and the Civil Rights Act of 1866, 42 U.S.C. § 1981. Employer liability under the PHRA “follows the standard applied under Title VII.” Knabe v. Boury Corp., 114 F.3d 407, 410 n.5 (3d Cir. 1997). Moreover, the legal standard for a Section 1981 case is identical to the standard in a Title VII case. Lewis v. University of Pittsburgh, 725 F.2d 910, 915 n.5 (3d Cir. 1983). Accordingly, this court need not separately analyze Burton’s claim under Title VII, the PHRA, and Section 1981.

race discrimination. Instead, defendants argue that they are entitled to summary judgment on Burton's discrimination claim because the adverse action, a written reprimand that prevented Burton from being promoted, was based on a legitimate, nondiscriminatory reason. Specifically, defendants present evidence that they issued Burton the written reprimand because he failed to supervise a subordinate who failed to do his job.³

This court finds that defendants have satisfied their burden of demonstrating a legitimate, nondiscriminatory reason for issuing Burton the written reprimand. Accordingly, this court must next determine whether Burton can show that defendants' reason for the adverse action is actually a pretext for discrimination.

To show that discrimination was more likely than not a cause for the employer's action, the plaintiff may show that the employer "has discriminated against other persons within the plaintiff's protected class." Simpson v. Kay Jewelers, Div. of Sterling, Inc., 142 F.3d 639, 645 (3d Cir. 1998). In this case, Burton has presented evidence of a previous pattern of discrimination against blacks by the Pennsylvania Board of Probation & Parole.⁴ Burton has also demonstrated that other courts have acknowledged that the Board may have discriminated against blacks.⁵

Viewing the record in the light most favorable to Burton, the nonmoving party, this court

³ Burton Dep., at 25, 202-04.

⁴ Henry Watkins Aff.; Howrhu Self Aff.; Darryl Rankin Aff.; Ronald Zappan Aff.; Henry Williams Aff.

⁵ Russ-Tobias v. Pennsylvania Bd. of Probation & Parole, No. Civ. A. 04-270, 2004 WL 2600109 (E.D.Pa. Nov. 16, 2004) (denying defendants' motion for summary judgment on plaintiff's race discrimination claims because plaintiff presented evidence that the Board previously discriminated against blacks); Williams v. Pennsylvania Bd. of Probation & Parole, No. Civ. A. 93-5696, 1994 WL 558787 (E.D.Pa. Oct. 12, 1994) (denying plaintiffs' renewed motion for a preliminary injunction but noting that plaintiffs will probably prevail at trial in regard to at least some of their discrimination claims).

finds that Burton has adequately demonstrated that there is a genuine issue of material fact regarding whether defendants' proffered reason for the written reprimand was a pretext for discrimination. Accordingly, defendants' motion for summary judgment is denied. An appropriate order follows.

AND NOW, this 26th day of April, 2005, upon consideration of defendants' motion for summary judgment (Doc. # 63), and replies thereto, it is hereby ORDERED that said motion is DENIED.

/s/
LAWRENCE F. STENGEL, J.