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

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| **MICHAEL C. JONES,** | : | |
| **Plaintiff,** | : | **CIVIL ACTION** |
| | : | |
| **v.** | : | |
| | : | |
| **DONALD VAUGHN, et al.,** | : | **No. 04-1912** |
| **Defendants.** | : | |

**MEMORANDUM AND ORDER**

**Schiller, J.** **August 16, 2005**

Plaintiff Michael C. Jones, a prisoner at the State Correctional Institution at Graterford ("SCI-Graterford" or "the prison"), brings this 42 U.S.C. § 1983 action against SCI-Graterford officials Superintendent Vaughn, Lieutenant Radle, Sergeant Bronsburg, and Major Murray. Plaintiff alleges that his constitutional rights were violated when: (1) Defendants celled him with an inmate who physically attacked him; and (2) Defendant Radle retaliated against him for seeking redress for this act. Presently before this Court is Defendants' motion for summary judgment. For the reasons set forth below, the motion is granted.

## I. BACKGROUND

Plaintiff, a 25-year-old male, was incarcerated at SCI-Graterford in June of 2001. (Dep. of Michael C. Jones at 6-7.) He is currently serving a sentence of eight to sixteen years. (*Id.* at 6.) The following undisputed facts recount the relevant policies at SCI-Graterford and the events which led to the instant action.

### A. Celling Policies at SCI-Graterford

Whether they reside in the general population or in a restricted housing unit ("RHU"), most

inmates at the prison are double celled, i.e., celled with one other inmate. (Dep. of Sylvia Pallott at 46; Dep. of Lt. William Radle at 31-32 (stating that double cells house approximately 90-95% of general population inmates and 85% of RHU inmates).) Only inmates with a "Z code," one of several program codes assigned to prisoners on an as-needed basis, must be single celled. (Pallott Dep. at 24-26, 40-41.) A prisoner can be Z coded if he has a "documented history of aggressive behavior," which typically means that he has been in multiple physical fights with other inmates. (Radle Dep. at 37-38.) Any number of people, including prison counselors and corrections officers, may ask for a particular inmate to be Z coded. (Pallot Dep. at 43-45.) The inmate may even make the Z coding request himself. ( *Id.* at 43.) Once an application for Z coding is made, staff members comment and vote on the request through a "formal staffing" process. (*Id.* at 41-46.) Ultimately, the superintendent grants final approval or disapproval of the application. (*Id.* at 42.)

Other internal classifications determine where and with whom an inmate will be double celled. For instance, every prisoner is given a custody level, ranging from "1" for least restrictive to "5" for most restrictive. (*Id.* at 22-24.) All custody level 5 inmates are housed in one of the prison's two RHUs, J Block and L Block. (*Id.* at 49-50; Radle Dep. at 11.) Within the RHUs, inmates are further categorized as being either in disciplinary custody ("DC") or administrative custody ("AC"). (Pallott Dep. at 53.) For security reasons, AC inmates can only be celled with other AC inmates, and DC inmates can only be celled with other DC inmates. (Dep. of Lt. Ronald Bronsberg at 16.) Moreover, unofficially, SCI-Graterford's practice is to "look for like characteristics," such as similar religious beliefs, when deciding which two inmates to cell together. (*See* Radle Dep. at 31-32.)

### B. The Barry Moore Incident

#### 1. *Celling Plaintiff with Moore*

In November of 2002, Radle placed Plaintiff into an L Block cell with inmate Barry Moore. (Jones Dep. at 8-9.) Plaintiff is six feet two and 210 pounds, while Moore, who is "short," is between five feet two and five feet five. (*Id.* at 7, 29; Radle Dep. at 17.) At the time they were celled together, neither Moore nor Plaintiff was Z coded, but both were DC inmates with custody levels of 5. (*See* Decl. of John Gysen ¶ 6; Def.'s Mot. for Summ J. Ex. G1 (Extraordinary Occurrence Report).) The prison had issued Moore a misconduct charge approximately five months earlier, after he attacked his cell mate with a reading lamp. (Pl.'s Opp'n to Def.'s Mot. for Summ. J. Ex. I (Misconduct Report of June 13, 2002).) Although Moore was also criminally charged for this incident, the criminal charge was dismissed on March 10, 2003. (*Id.* Ex. J (Police Report).) Plaintiff, in turn, had received misconduct charges from the prison on two prior occasions, once in April of 2002 and again in July of 2002. (Jones Dep. at 23-24.) The April 2002 sanction occurred after Plaintiff "stabbed and fought [his] cell mate, Eric Edmonson . . . three times." (*Id.* at 23.)

At all relevant times, Moore and Plaintiff were both practicing Muslims. (*Id.* at 9-10; Radle Dep. at 52.) Their double celling coincided with the onset of Ramadan, a holy month on the Muslim calendar for fasting and prayer. (Jones Dep. at 9-10.) Radle explained that, for Muslims observing Ramadan, "it's easier if they're [celled] with somebody else who is Muslim because they don't eat during daylight hours." (Radle Dep. at 52.) Knowing that Plaintiff and Moore were both Muslim, Radle felt that "there was no problem" with double celling them. ( *Id.* at 52-53.) Plaintiff asserts that the first time he talked to Moore was "[o]nce I became cell mates with him in the month of November." (Jones Dep. at 8-9.) Nevertheless, he agrees that both he and Moore were observing

Ramadan that month, and describes his relationship with Moore as "all based on [] religious issues." (*Id.* at 10.)

2. *Plaintiff's Fight with Moore*

On November 29, 2002, at around 3 a.m., Plaintiff and Moore began to argue about the cell light being on. (*Id.* at 12-13.) Moore then twice punched Plaintiff in the face, commencing a physical fight. (*Id.* at 13-14.) The fight briefly ceased when a corrections officer ("CO") arrived at the cell door. (*Id.* at 14) Moore assured the CO that everything was fine. (*Id.*) Once the CO walked away, however, the fight resumed. (*Id.*) Moore "picked up a skull cap and put all this soap inside the skull cap . . . and he had a plastic diet tray." (*Id.* at 15.) He rushed at Plaintiff, holding a weapon which Plaintiff described as a "knife," but which was later revealed to be a purple plastic toothbrush, wrapped up in tape on the end and sharpened to a point. (*Id.* at 16-17; Gysen Decl. ¶ 3.) After Moore bit Plaintiff on the chest, Plaintiff took the weapon from him and used it to jab him. (Jones Dep. at 17; Gysen Decl. ¶ 3.) Moore, who was wearing a cast on his arm (Jones Dep. at 29), was unable to defend himself. (Gysen Decl. ¶ 3.)

Several COs then arrived and broke up the fight. (Jones Dep. at 17.) The COs took both inmates to the infirmary. (*Id.* at 17-18.) There, medical examinations showed a bite mark on Jones's chest and abrasions on his left hand and arm; they also revealed that Moore had sustained stab wounds above his left eye, on the top of his head, and between his shoulder blades. (Gysen Decl. ¶ 7 (*citing* Def.'s Mot. for Summ. J. Ex. G1).) Because his wounds required sutures, Moore was taken to the emergency room at Mercy Suburban Hospital. (Def.'s Mot. for Summ. J. Ex. G1 at 1.) Thereafter, the prison issued misconduct charges to both Plaintiff and Moore for "aggravated assault, threatening, and possession of a weapon." (Jones Dep. at 18.) The Pennsylvania State Police also

investigated the incident, and on January 29, 2003, charged Plaintiff with aggravated assault, weapons violations, and possessing implements of escape.[1] (*Id.* at 18; Shelly Decl. ¶¶ 6-7.) On November 5, 2003, following a jury trial in the Montgomery County Court of Common Pleas, Jones was convicted of all charges except aggravated assault. (Shelly Decl. ¶¶ 7-8; Jones Dep. at 19.) He was sentenced to "one to two years on the charge of possessing instruments of a crime and two to four years for weapons and implements of escape." (Shelly Decl. ¶ 8.)

3. *Plaintiff's Grievances*

Plaintiff filed two grievances at the prison arising from his fight with Moore. He submitted the first on January 27, 2003. (Def.'s Mot. for Summ. J. Ex. B1 (Grievance # GRA-42858).) In this grievance, Plaintiff recounted his November 2002 fight with Moore, as well as his fight with Eric Edmonson, his prior cell mate, in April of 2002. (*Id.*) Describing Moore's injuries as "major wounds," Plaintiff sought to hold SCI-Graterford liable for allowing him to have cell mates despite his *own* "anxiety and assaultive behavior." (*Id.*) He also requested the return of his personal property, which he asserts that Moore obtained following their fight. (*Id.*; Jones Dep. at 30.) This grievance, according to Plaintiff, "was actually about my property." (Jones Dep. at 30.) Plaintiff appealed this grievance to final review, where Sharon Burks, the chief grievance coordinator for the Pennsylvania Department of Corrections, dismissed it for failure to include necessary documentation. (Decl. of Sharon Burks ¶ 4.)

Plaintiff submitted a second grievance in November of 2003. (Def.'s Mot. for Summ. J. Ex. B3 (Grievance # GRA-67594).) Plaintiff asserts that he filed it after a conversation with Radle, in

[1] The police did not bring charges against Moore, who had recently reached his maximum sentence and had been released. (Decl. of Trooper Colleen Shelly ¶ 6; Jones Dep. at 18.)

which Radle stated that he "knew that something was going to happen" between Plaintiff and Moore. (Jones Dep. at 27, 31-32.) Radle's statement led Plaintiff to conclude that Radle "put me in the cell for a reason." (*Id.* at 27-28.) Thus, in his November 2003 grievance, Plaintiff indicated that he had "just recently" learned that Moore had been criminally charged for assaulting a cell mate in 2002. (Def.'s Mot. for Summ. J. Ex. B3.) Plaintiff contended that, had he known that Moore was "[a]ssaultive," he would have "move[d] out of the cell with him." (*Id.*) Citing the Eighth Amendment, Plaintiff sought to recover $70,000 for SCI-Graterford's "deliberate indifference." (*Id.*)

On November 14, 2003, the facility grievance coordinator at SCI-Graterford rejected Plaintiff's second grievance as untimely. (*Id.* Ex. B4 (Grievance Rejection Form).) Plaintiff did not appeal this decision to either intermediate or final review. (Burks Decl. ¶ 5.) Nonetheless, on May 17, 2004, Plaintiff, acting *pro se*, filed the instant action. (*See* Compl. of May 17, 2004.)

**C. The Cell Search**

1. *Radle's November 2004 Search*

On November 25, 2004, Radle conducted a search of Plaintiff's cell. (Radle Dep. at 67; *see also* Pl.'s Opp'n to Def.'s Mot. for Summ. J. Ex. G (Letter from David DiGuglielmo re: Grievance # GRA-103546).) SCI-Graterford policy requires that every cell in the RHU be searched "a minimum of once every thirty days." (Radle Dep. at 62.) Plaintiff, at that time, still resided in the RHU. (Jones Dep. at 34-36.) This particular search followed a request from Plaintiff, made earlier that day, to visit the prison law library with another inmate. (*Id.* at 35.) Radle had denied Plaintiff's request because security concerns precluded "mixing" the other inmate, an AC inmate, with Plaintiff, a DC inmate. (Radle Dep. at 68; *see also* Bronsburg Dep. at 16.) When Radle denied Plaintiff's request, Plaintiff and Radle "had words with each other" and Radle gave Jones a misconduct for

"threatening him." (Jones Dep. at 36.) Plaintiff's request, as well as his abusive language, aroused Radle's suspicions. (Radle Dep. at 70-72.) Both Plaintiff and the AC inmate were "known to smoke," and one way for RHU inmates to exchange contraband is to meet up in the law library. (*Id.*) Radle was thus suspicious of Plaintiff's intentions, and asserts that, as a result, he decided to search Plaintiff's cell. (*Id.*)

Radle permitted Plaintiff to go to the law library alone, during which time the search took place. (Jones Dep. at 37.) Upon returning to his cell, Plaintiff noticed that all of his possessions were in disarray. (*Id.*) He claims that "many items" were missing, including a copy of the Koran, legal materials, soap and shampoo, clothing, sheets, and towels. (*Id.*) Radle denies confiscating anything other than "excess state issued property." (Radle Dep. at 72.) Plaintiff, however, asserts that COs sometimes "throw stuff in the trash" if they "don't like a person or a certain inmate," which makes it difficult to prove that certain items were confiscated. (Jones Dep. at 37-38).

2. *Plaintiff's Grievance*

On December 7, 2004, Plaintiff filed a grievance regarding Radle's search of his cell. (*See* Pl.'s Opp'n to Def.'s Mot. for Summ. J. Ex F (Letter from Sharon Burks re: Grievance # GRA-103546).) Although it is unclear how this grievance was initially resolved, there is no doubt that Plaintiff appealed it to the superintendent's office. (*Id.* Ex. G.) On January 12, 2005, that office informed Plaintiff that his grievance was being "reassigned," stating that: "You have filed numerous complaints about Lt. Radle including his involvement in the search of your cell on November 25, 2004. Mr. Baker will conduct a further review of your claim of lost property as a result of the search." (*Id.*) Plaintiff was encouraged to "cooperate" with Baker, the unit manager, "when he discusses your grievance with you." (*Id.*)

Subsequently, Baker spoke with Plaintiff about his grievance, but concluded that there was no "concrete evidence" to prove that COs "went into [Plaintiff's] cell and threw stuff in the trash." (Jones Dep. at 40.) Plaintiff claims that he appealed Baker's decision. (*Id.*) On January 18, 2005, however, Burks sent Plaintiff a letter which purported to be "in response to [his] 1/12/05 correspondence regarding problems . . . with SCI-[Graterford] staff." (Pl.'s Opp'n to Def.'s Mot. for Summ. J. Ex F.) In her letter, Burks stated that although Plaintiff had successfully appealed his grievance about the cell search to the superintendent's office, he had "failed to appeal [it] to final review." (*Id.*)

While his December 2004 grievance was being processed, Plaintiff, with the assistance of counsel, filed a Second Amended Complaint "[t]o preserve his claims in the instant litigation." (Pl.'s Mem. of Law in Supp. of Opp'n at 6.) Accordingly, Plaintiff's Second Amended Complaint, dated December 21, 2004, includes a retaliation claim against Radle for searching Plaintiff's cell and confiscating his property.

## II. STANDARD OF REVIEW

Summary judgment is appropriate when the admissible evidence fails to demonstrate a dispute of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c) (2005); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). When the moving party does not bear the burden of persuasion at trial, the moving party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry its burden of persuasion at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Thereafter, the nonmoving party demonstrates a genuine issue of material fact if sufficient evidence is provided to

allow a reasonable jury to find for him at trial. *Anderson*, 477 U.S. at 248. To meet this burden, the opposing party must point to specific, affirmative evidence in the record and not simply rely on mere allegations, conclusory or vague statements, or general denials in the pleadings. *Celotex*, 477 U.S. at 324. In reviewing the record, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Armbruster v. Unisys Corp.*, 32 F.3d 768, 777 (3d Cir. 1994). Furthermore, a court may not make credibility determinations or weigh the evidence in making its determination. *See Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000); *see also Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002).

## III. DISCUSSION

Plaintiff brings federal constitutional claims under the First Amendment and the Eighth Amendment. Defendants have moved for summary judgment on each of these claims. Plaintiff concedes that he has produced insufficient evidence to sustain his claims against Defendants Murray and Bronsburg and agrees that these claims should be dismissed. (*See* Pl.'s Mem. of Law in Supp. of Opp'n at 1 n.1.) Accordingly, summary judgment is granted in favor of Defendants Murray and Bronsburg. The Court will now discuss Plaintiff's claims against Defendants Vaughn and Radle.

### A. Failure to Protect

First, Plaintiff alleges that Defendants Vaughn and Radle, in violation of the Eighth Amendment, were deliberately indifferent to a substantial risk posed by Moore.[2] Defendants argue

[2] Initially, Plaintiff also alleged that Vaughn and Radle were deliberately indifferent in violation of the Fourteenth Amendment's due process clause. (Second Am. Compl. ¶¶ 33-37.) Now, however, Plaintiff is pursuing these claims under the Eighth Amendment only. (*See* Pl.'s Mem. of Law in Supp. of Opp'n at 2.) Indeed, as Plaintiff is a sentenced inmate and not a pretrial detainee, the Eighth Amendment is the proper vehicle for alleging deliberate indifference.

that these claims must be dismissed because Plaintiff failed to exhaust his administrative remedies. Defendants also argue that, in any event, there is no evidence that they violated the Eighth Amendment.

1. *Exhaustion of Administrative Remedies*

Section 1997e(a), as amended by the Prison Litigation Reform Act of 1996 ("PLRA"), provides that "[n]o action shall be brought with respect to prison conditions . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a) (2005). "The PLRA was enacted with a two-fold purpose: to limit the number of prison condition lawsuits then flooding the courts and to return control over prison policies and decision-making to local prison officials." *DeHart v. Horn*, 390 F.3d 262, 273 (3d Cir. 2004) (*citing Porter v. Nussle*, 534 U.S. 516, 524-25 (2002)). In light of these goals, § 1997e(a) makes exhaustion of prison administrative remedies mandatory, "regardless of the efficacy of the grievance process." *Id.* (citations omitted); *see also Nyhuis v. Reno*, 204 F.3d 65, 75 (3d Cir. 2000) (stating that mandatory exhaustion requirement serves underlying policies of PLRA).

The Pennsylvania Department of Corrections ("DOC") has a three-step administrative grievance process, known as the "Consolidated Inmate Grievance System." *Booth v. Churner*, 206 F.3d 289, 292 n.2 (3d Cir. 2000). The process works as follows: First, an inmate submits a grievance to the facility grievance coordinator, within fifteen days after the events upon which the

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*See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (constitutionality of prison conditions should be analyzed under Eighth Amendment for sentenced inmates and Fourteenth Amendment for pretrial detainees). Regardless, even if Plaintiff were still seeking relief under the Fourteenth Amendment, his claims would fail because there is no evidence that he was denied the right to due process. *See, e.g.*, *Butler v. County of Bucks*, Civ. A. No. 03-4689, 2005 WL 639721, at *4 n.8, 2005 U.S. Dist. LEXIS 4197, at *14 n.8 (E.D. Pa. Mar. 18, 2005) (holding that inmate alleging deliberate indifference had not shown any substantive due process violation).

claims are based. *Id.* The grievance office must, within ten working days, send the grievant a written response, summarizing the conclusions and any action taken. *Id.* Second, within five days of receipt of this response, the grievant may appeal to the appropriate intermediate review personnel. *Id.* The intermediate review personnel must, within ten working days, make a determination on the grievance and notify the grievant of their decision. *Id.* Third, within seven days of receipt of this decision, the grievant may appeal to the Central Office Review Committee for final review. *Id.* To satisfy § 1997e(a)'s exhaustion requirement, an inmate must complete all three of these steps, when possible. *See Booth v. Pence*, 354 F. Supp. 2d 553, 558 (E.D. Pa. 2005) (*citing Spruill v. Gillis*, 372 F.3d 218, 227-28 (3d Cir. 2004)). In other words, an inmate must "avail[] himself of every process at every turn" by pursuing all available appeals. *Spruill*, 372 F.3d at 227-28.

Here, Plaintiff did not "avail[] himself of every process at every turn." *See id.* Although he filed two grievances concerning his fight with Moore, the first was unrelated to his present claims and the second was never appealed. The first grievance, dated January 27, 2003, was, in Plaintiff's own words, "actually about my property." (Jones Dep. at 30.) Moreover, while this grievance mentioned Moore, it asserted not that Moore posed a danger to Plaintiff, but rather that *Plaintiff* posed a danger to other inmates. (Def.'s Mot. for Summ. J. Ex. B1.) The second grievance, dated November of 2003, was indeed directed to Moore's "assaultive" past. (*Id.* Ex. B3.) Nevertheless, when this grievance was rejected as untimely, Plaintiff failed to appeal to either intermediate or final review. (Burks Decl. ¶ 5 ("Though it appears that Jones submitted a grievance in November 2003, with respect to being double-celled with Barry Moore . . . Jones did not exhaust his administrative remedies for that grievance.").) Thus, whether or not the grievance board properly dismissed this grievance, Plaintiff failed to exhaust his remedies when he failed to appeal that decision. *See, e.g.*,

*Wright v. O'Hara*, Civ. A. No. 00-1557, 2004 WL 1793018, at *5, 2004 U.S. Dist. LEXIS 15984, at *13-15 (E.D. Pa. Aug. 11, 2004) (holding that plaintiff, by failing to appeal rejection of grievance, failed to exhaust administrative remedies); *see also Spruill*, 372 F.3d at 227-28.

Accordingly, because Plaintiff failed to exhaust his administrative remedies, Defendants' motion for summary judgment is granted as to Plaintiff's Eighth Amendment claims. The Court, however, also finds that these claims fail on the merits.[3]

2. *Violation of the Eighth Amendment*

Prison officials have a duty to protect prisoners from violence at the hands of other prisoners. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). "It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety." *Id.* at 834. Rather, an Eighth Amendment claim against a prison official cannot succeed unless: (1) the deprivation alleged is, objectively, sufficiently serious; and

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[3] The Third Circuit has held that § 1997e(a)'s exhaustion requirement "is *not* a jurisdictional requirement, such that failure to comply with the section would deprive federal courts of subject matter jurisdiction." *Ray v. Kertes*, 285 F.3d 287, 292 n.4 (3d Cir. 2002) (quotation omitted) (emphasis in original). This Court, therefore, is not jurisdictionally barred from considering the merits of Plaintiff's claims, and will proceed to do so. *See, e.g.*, *Pence*, 354 F. Supp. 2d at 558 (granting defendant's motion for summary judgment on exhaustion grounds but nonetheless analyzing merits of plaintiff's claims).

The Court further observes that this case is distinguishable from *Nyhuis*, where the Third Circuit stated that the magistrate judge, having dismissed the case for failure to exhaust, "should not have reached the merits of Nyhuis's claim." 204 F.3d at 78. *Nyhuis* concerned a plaintiff who still had the opportunity to "go back and exhaust." *See id.* at 68. In fact, the magistrate judge had reached the merits of the case for fear that the plaintiff would "refile his action after exhausting the administrative process." *See id.* Here, by contrast, Plaintiff cannot "go back" - the time has passed for him to file and exhaust an appropriate grievance. *See Booth*, 206 F.3d at 292 n.2 (stating that, under Consolidated Inmate Grievance System, inmate must file grievance within fifteen days after the events upon which claims are based). Moreover, the factual basis of this case has been fully developed through the discovery process. *Cf. Nyhuis*, 204 F.3d at 68 (noting that magistrate judge opined on merits without allowing for discovery or development of factual record). Accordingly, now is the time for the merits to be adjudicated.

(2) the prison official has a sufficiently culpable state of mind. *Beers-Capitol v. Whetzel*, 256 F.3d 120, 125 (3d Cir. 2001). If the claim is based on a failure to prevent harm, "the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm." *Farmer*, 511 U.S. at 834 (*citing Helling v. McKinney*, 509 U.S. 25, 35 (1993)). Moreover, the prison official must have acted with "deliberate indifference" to the inmate's health or safety. *Beers-Capitol*, 256 F.3d at 125. Deliberate indifference is a subjective standard under which the prison official "must actually have known or been aware of the excessive risk to inmate safety." *Id.*; *see also Billman v. Ind. Dep't of Corr.*, 56 F.3d 785, 788 (7th Cir. 1995) (Posner, J.) ("If they place a prisoner in a cell that has a cobra . . . [and] know that there is a cobra there, or at least that there is a high probability of a cobra there, and do nothing, that is deliberate indifference.").

a. Substantial Risk of Serious Harm

By celling Plaintiff with Moore, Defendants were not subjecting Plaintiff to a substantial risk of serious harm. *See Beers-Capitol*, 256 F.3d at 125. While Moore had assaulted another inmate in the past, there is no dispute that Moore is at least nine inches shorter than Plaintiff and, at the time the two were celled together, was wearing a cast on his arm. (Jones Dep. at 7, 29; Radle Dep. at 17.) Thus, while Moore may have had violent proclivities, the idea that he posed a substantial risk to Plaintiff, who had previously *stabbed* another inmate, simply defies common sense. Furthermore, Plaintiff did not sustain serious harm from his fight with Moore; following the fight, Moore required a trip to the hospital for sutures, while Plaintiff walked away with only a bite mark on his chest and abrasions on his left hand and arm. (*See* Def.'s Mot. for Summ. J. Ex. G1 at 1.) These injuries "are constitutionally de minimis and, independently of any state of mind question, do not rise to the level of an Eighth Amendment violation." *Mabine v. Vaughn*, 25 F. Supp. 2d 587, 591 (E.D. Pa. 1998)

(holding that plaintiff did not suffer serious harm from other inmate who struck him on the head, where plaintiff was diagnosed with a tension headache but received no follow-up treatment); *see also Mitchell v. Horn*, 318 F.3d 523, 533-36 (3d Cir. 2003) (holding that prisoner asserting mental or emotional injury must also show physical injury that is more than de minimis).

b. Deliberate Indifference

Regardless, there is no evidence that Defendants Radle and Vaughn were deliberately indifferent to Plaintiff's safety. The standard of deliberate indifference is met only when the official in question subjectively "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837. Mere negligence or inadvertence will not satisfy the deliberate indifference standard and cannot constitute a violation of the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976).

Here, there is nothing to indicate that either Defendant acted with deliberate indifference. Plaintiff asserts that Defendant Radle "no doubt" knew about Moore's track record of violence. (Pl.'s Mem. of Law in Supp. of Opp'n at 7.) Plaintiff's only support for this assertion, however, is Radle's alleged statement, made sometime in 2003, that he knew "something" was going to happen between Plaintiff and Moore. (Jones Dep. at 27, 31-32.) This vague statement, standing alone, is not enough to suggest that Radle knew that Moore was dangerous. *See Celotex*, 477 U.S. at 324 (to defeat summary judgment, the opposing party must point to more than simply "conclusory or vague statements"). At SCI-Graterford, "fights happen all the time." (Radle Dep. at 23.) Radle's position as a lieutenant did not afford him the opportunity to review records and reports relating to Moore, which could have revealed that, in June of 2002, Moore had assaulted his cell mate. (*Id.* at 19.) In

fact, Radle stated that he was not aware that this assault had occurred. (*Id.* at 20). Radle further stated that, as far as he knows, Moore does not have a reputation for assaultive conduct and is respected by other inmates. (*Id.* at 17, 22.) Thus, even if Radle did know that "something" was going to happen between Plaintiff and Moore, there is no evidence thathe knew Moore posed a threat to Plaintiff's safety.

In fact, the record suggests that, rather than being deliberately indifferent to Plaintiff's well-being, Radle affirmatively tried to ensure that Plaintiff had an appropriate cell mate. For instance, Radle chose to cell Plaintiff with Moore, a practicing Muslim who, like Plaintiff, was fasting in observation of Ramadan. (*Id.* at 52; Jones Dep. at 10.) In addition, Plaintiff and Moore had matching classifications which permitted them to be housed together, as both were DC inmates with custody levels of 5. (*See* Def.'s Mot. for Summ. J. Ex. G1.) Importantly, neither one was Z coded, which meant that, as far as Radle knew, single celling was not necessary. (Gysen Decl. ¶ 6; Pallott Dep. at 24-26.) Given these circumstances, a reasonable jury could not find that Radle "knew of and disregarded" an excessive risk to Plaintiff's safety. *See Farmer*, 511 U.S. at 837.

Similarly, a reasonable jury could not find that Defendant Vaughn "knew of and disregarded" such a risk. Plaintiff argues that Vaughn, the prison's acting superintendent, was deliberately indifferent to Plaintiff's safety because he "implemented the DOC's cell classification system in a way that clearly failed to protect inmates." (Pl.'s Mem. of Law in Supp. of Opp'n at 12.) Specifically, Plaintiff contends that, had it not been for SCI-Graterford's "blatantly lax attitude," Moore would have been given a Z code, requiring him to be single celled. (*Id.* at 8.) The record does not support this contention. While it is true that Z coding is determined on a case by case basis (*see, e.g.*, Pallott Dep. at 43-45, 88-90), this does not make the determination haphazard or lax. To

the contrary, at SCI-Graterford, Z coding entails three-step procedure whereby: (1) a request for a Z code is made from one of several sources; (2) a "formal staffing" process takes place, allowing prison staff to comment and vote on the Z code application; and (3) the superintendent grants final approval or disapproval of the application. (*Id.* at 41-46.) There is no evidence that anyone at the prison ever asked that Moore be Z coded. (*See, e.g.*, Radle Dep. at 39-41.) Thus, in Moore's case, it is not that the prison did not properly follow the Z coding procedure, but rather that no one saw a need to apply this procedure.

Indeed, there is no reason to believe that there was such a need. At SCI-Graterford, Z codes and single cells are reserved for only the most aggressive of inmates. (*See* Pallott Dep. at 46; Radle Dep. at 37-38.) This does not mean, however, that SCI-Graterford takes no precautions for the remainder of its prisoners. Instead, the prison employs a framework of classifications to help determine which inmates may safely be celled together. (*See, e.g.*, Bronsburg Dep. at 16 (stating that AC inmates can only be celled with other AC inmates, and DC inmates can only be celled with other DC inmates).) This system more than satisfies the requirement, cited by Plaintiff, that a prison adopt "some system" of classifying and housing prisoners so as to "minimize the risk of harm from fellow inmates." *Calderon-Ortiz v. Laboy-Alvarado*, 300 F.3d 60, 65 (1st Cir. 2002).

Therefore, Plaintiff's Eighth Amendment claims fail on the merits.

**B. Retaliation**

Seond, Plaintiff alleges that Defendant Radle, in violation of the First Amendment, retaliated against him for filing grievances and/or for filing the instant lawsuit. (Second Am. Compl. ¶¶ 38-48.) Radle's retaliation, according to Plaintiff, occurred on November 25, 2004, when Radle searched Plaintiff's cell and threw away his property. (*Id.*) Defendants respond that, like his Eighth

Amendment claims, Plaintiff's retaliation claim must be dismissed because Plaintiff failed to exhaust his administrative remedies. Defendants further argue that there is no connection between Radle's search of Plaintiff's cell and Plaintiff's protected conduct.

1. *Exhaustion of Administrative Remedies*

As explained above, § 1997e(a) requires prisoners to exhaust all available administrative remedies prior to filing a prison condition lawsuit. 42 U.S.C. § 1997e(a); *see also DeHart*, 390 F.3d at 273. In Pennsylvania, a prisoner has not complied with § 1997e(a) unless he has thoroughly pursued the DOC's three-step grievance process, or, in other words, unless he has "availed himself of every process at every turn." *Spruill*, 372 F.2d at 227-28.

Although I held that Plaintiff did not properly exhaust administrative remedies for his Eighth Amendment claims, I reach a different conclusion with respect to Plaintiff's retaliation claim. On this claim, Plaintiff filed a relevant grievance and pursued it to all ends "available," under any reasonable interpretation of that term. *See Brown v. Croak*, 31 F.3d 109, 112 (3d Cir. 2002) (defining "available" as "capable of use; at hand"). There is no dispute that Plaintiff filed a grievance about the search of his cell and appealed it to intermediate review, i.e., the superintendent's office. (*See* Pl.'s Opp'n to Def.'s Mot. for Summ. J. Exs. F & G.) On January 12, 2005, Plaintiff received a letter from the superintendent's office indicating that his grievance had been "reassigned" for further investigation. (*Id.* Ex. G.) Just six days later, though, Plaintiff received a letter from Burks which, inter alia, informed him that he had "failed to appeal [this grievance] to final review." (*Id.* Ex. F.)

Burks's letter, in effect, deprived Plaintiff of the final level of appeal to which a prisoner is normally entitled. *See Brown*, 312 F.3d at 113 (holding that where prison officials thwarted

plaintiff's efforts to exhaust administrative remedies, those remedies were never "available"). First, it would not have made sense for Plaintiff to pursue a final appeal on January 12, 2005 – as of that date, the superintendent's office had simply "reassigned" Plaintiff's grievance to Baker, an investigator. The right time for a final appeal was after Baker had rejected the grievance and, indeed, Plaintiff asserts that he did appeal at that time. (Jones Dep. at 40.) Burks, however, "gave [Plaintiff] a response before Baker ever even responded." (*Id.* at 40-41.) Second, even if the January 12, 2005 "reassignment" of Plaintiff's grievance did constitute a decision ripe for appeal, Plaintiff had seven days in which to file that appeal. *See Booth*, 206 F.3d at 292 n.2 (stating that grievant has seven days after receipt of intermediate review personnel's decision to appeal to final review). This means that, at a minimum, Plaintiff had until January 19, 2005 to file his final appeal. On January 18, 2005, however, this opportunity was lost when he was informed that he had already failed to do so.

Therefore, Plaintiff's retaliation claim will not be dismissed for failure to exhaust administrative remedies.

2. *Violation of the First Amendment*

Nevertheless, this claim is dismissed because there is no evidence that Radle retaliated against Plaintiff. To prevail on a claim for retaliation, an inmate must show that: (1) he engaged in conduct that was constitutionally protected; (2) he suffered an adverse action at the hands of prison officials; and (3) there was a causal link between the exercise of his constitutional rights and the adverse action taken against him. *Mitchell*, 318 F.3d at 530 (citations and quotations omitted). The inmate must demonstrate a "causal link" by proving that his constitutionally protected conduct was "a substantial or motivating factor" in the decision to take the adverse action. *Rauser v. Horn*, 241 F.3d 330, 333 (3d Cir. 2001) (*citing Mt. Healthy City Sch. Dist. Bd. of Ed. v. Doyle*, 429 U.S. 274,

287 (1977)). The burden then shifts to the prison officials to prove that "they would have made the same decision absent the protected conduct for reasons reasonably related to a legitimate penological interest." *Id.* at 334. At the summary judgment stage, the prisoner need only produce "evidence from which a reasonable jury could conclude" that the exercise of his right was a substantial or motivating factor in the prison officials' actions; nonetheless, he must provide more than a "scintilla of evidence" to survive summary judgment. *Pence*, 354 F. Supp. 2d at 560 (*citing Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992)).

Plaintiff has not produced any evidence that his protected conduct was a "substantial or motivating factor" in the events of November 25, 2004. At SCI-Graterford, RHU cells must be searched at least once every thirty days. (Radle Dep. at 62.) Radle asserts that, on this particular day, he decided to search Plaintiff's cell because he suspected that Plaintiff was planning to exchange contraband with another inmate. (*Id.* at 70-71.) The record, including Plaintiff's own testimony, supports this assertion. (*See* Jones Dep. at 35-36.) Regardless, there is nothing to suggest that the search had anything to do with Plaintiff's prior grievances or with this lawsuit. The search was conducted over six months after Plaintiff filed this action and over a year after his last grievance regarding Moore. (*See* Compl. of May 17, 2004; Def.'s Mot. for Summ. J. Ex. B3.) As such, there is not even a "suggestive temporal proximity" between the search and Plaintiff's protected conduct, from which causation could be inferred. *See Rauser*, 241 F.3d at 334 (indicating that suggestive timing is relevant to causation in retaliation cases). Therefore, even assuming that, in course of the search, Radle indeed confiscated Plaintiff's personal property (*see* Jones Dep. at 37), there is simply no evidence that this act was retaliatory.

Accordingly, Defendants' motion for summary judgment is granted as to Plaintiff's

retaliation claim.

## IV. CONCLUSION

For the reasons stated above, Defendants' motion for summary judgment is granted. An appropriate Order follows.

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

| | | |
|---|---|---|
| **MICHAEL C. JONES,** | **:** | |
| **Plaintiff,** | **:** | **CIVIL ACTION** |
| | **:** | |
| **v.** | **:** | |
| | **:** | |
| **DONALD VAUGHN, et al.,** | **:** | **No. 04-1912** |
| **Defendants.** | **:** | |

**ORDER**

**AND NOW**, this **16th** day of **August, 2005**, upon consideration of Defendants' Motion for Summary Judgment, Plaintiff's response thereto, Defendants' reply thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendants' Motion for Leave to File a Reply (Document No. 43) is **GRANTED**.

2. Defendants' Motion for Summary Judgment (Document No. 36) is **GRANTED**.

3. Judgment is entered in favor of Defendants and against Plaintiff.

4. The Clerk of Court is directed to close this case.

**BY THE COURT:**

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**Berle M. Schiller, J.**