

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

BATSAIHAN PURVEEGIIN : CIVIL ACTION
: :
v. : :
: :
BERKS COUNTY PRISON, et al. : NO. 05-cv-2139-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

March 22, 2007

Plaintiff spent three and half years in various immigration detention facilities, awaiting a final determination of his immigration status.¹ From March 2004 to July 2005, plaintiff was held in the immigration detention unit of Berks County Prison. He brought this action against the prison officials ("prison defendants") and the independent medical services provider ("medical defendants") challenging the conditions of his detention. I dismissed some of plaintiff's claims on May 24, 2006. The prison defendants have now moved for summary judgment on the remaining counts against them (Counts V, VIII-X, XIV). Plaintiff in turn moved for summary judgment on Count VIII. Defendants' motion will be granted.

In Count V, plaintiff claims he did not receive adequate medical care for his Type II diabetes. In particular, plaintiff alleges that he did not receive a diet that complied

¹ Just a few weeks ago, the government "inadvertently" deported plaintiff to Mongolia. The Third Circuit has now ordered the government to return plaintiff to the United States.

with guidelines from the American Diabetes Association ("ADA"). The ADA-compliant diet differs from the normal diet in both quantity (e.g., two slices of bread instead of three) and nutritional value (e.g., fresh fruit instead of cookies). The prison doctor, also a defendant in this action, testified that plaintiff was placed on the ADA diet; plaintiff himself complained about his "special" diet; the Warden investigated plaintiff's complaint and responded that he was already on the ADA diet. On the other hand, plaintiff has pointed to lacunae in the prison records where one would expect to find doctors' orders prescribing an ADA diet for plaintiff. Thus, a question remains whether plaintiff in fact received an ADA diet for the 16 months he was detained in Berks County Prison. However, in no sense can the prison officials be said to have been deliberately indifferent to plaintiff's medical need.

With respect to Count VIII, the parties agree that plaintiff was placed in disciplinary segregation in April and May 2005 (for seven and ten days respectively) for filing numerous "communications" with the prison officials. In the 13-month period from May 2004 to May 2005, plaintiff filed forty "communications" regarding his mail, repeatedly requesting logs of his mail and complaining that his mail was being censored and tampered with. Plaintiff characterizes these communications as grievances and argues that he was punished for exercising his

right to seek redress guaranteed by the First Amendment. Defendants point out that plaintiff was disciplined not because he filed grievances, but because he violated INS and prison regulations by filing multiple grievances on the same issue directed to multiple prison officials and filing repetitive grievances on issues that had already been addressed. Plaintiff continued to violate these regulations even after he was warned. Such regulations, which aid the orderly administration of the prison, do not unreasonably interfere with plaintiff's exercise of his First Amendment right.

On the remaining counts, defendants Arms and Deiterich² testified at deposition that they have never tampered with plaintiff's mail, assaulted or incited other inmates to assault plaintiff. Plaintiff does not address defendants' argument for summary judgment on these counts and has not offered any evidence to support his own allegations. Thus, these counts too will be dismissed.

An order follows.

² The docket incorrectly lists the defendant as Dietrich.

