

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

JOHN FLAMER,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	No. 95-7889
	:	
E.M.S.A; NURSES CYNTHIA; KIM	:	
CHRISTIE; NURSE SUE; BARBARA	:	
WALRATH; DOCTOR CARRILLO;	:	
CAPTAIN LEVANDOWSKI; GEORGE	:	
HILL; SPIGERILLI; NURSE SHARON	:	
CORPORAL QUIGLEY,	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

November , 1997

Presently before the court is Defendant Corporal Quigley's Motion for Summary Judgment and Plaintiff's Answer thereto.<sup>1</sup> For the following reasons, Defendant's Motion is granted.

**I. FACTS**

Plaintiff was granted leave to proceed in forma pauperis by Order of this Court dated February 27, 1996. Thereafter, Plaintiff executed a voluntary dismissal with respect to his claims against Defendants Walrath, Levandowski, Spigerilli and Hill which was granted by Order of this Court dated December 11, 1996. This court previously granted summary judgment in favor of Defendants EMSA, Nurse Cynthia, Kim Christie, Nurse Sue, Barbara Walrath, Doctor Carrillo and Nurse Sharon. For the present

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<sup>1</sup> Note that this court received a letter filed October 6, 1997 from Plaintiff's attorney in another matter informing the court that Plaintiff is presently incarcerated at Lynchburg City Jail in Lynchburg, VA and that Plaintiff requests that all proceedings related to matters pending in this court be continued until Plaintiff is released from incarceration. As the present action was ready for disposition before Plaintiff's present incarceration, this motion will be decided without further delay.

motion, the complaint will be read against the only remaining Defendant, Defendant Quigley. Plaintiff brings this action against the Defendant under 42 U.S.C. § 1983 alleging violations of his civil and/or constitutional rights. Plaintiff alleges that Defendant Quigley refused to investigate an assault upon the Plaintiff, inappropriately logged Plaintiff's injury as self-inflicted and placed Plaintiff in a cell naked.

Plaintiff states that on November 19, 1995 he asked a nurse named Mary if he could come to the hospital to calm down because he was mad. (Flamer dep., 2/27/97 at 64.) Plaintiff admits to having a history of self-mutilation and states that when he was transferred to the medical ward in response to his request, he was placed in an isolation cell and his clothes were taken on account of his history. (Flamer dep., 2/27/97 at 62.) Plaintiff states that after he was allowed to retrieve his clothes to return to the cell block, he was involved in an argument with a guard who pushed him into a cell and closed the cell door on his leg. (Flamer dep., 5/22/97 at 44-56.)

Defendant Quigley told the Plaintiff he was sent to investigate the incident involving the guard, however, Plaintiff told Defendant he did not want him investigating the incident because Plaintiff alleges that the Defendant was involved in a prior assault upon him. (Flamer dep., 5/22/97 at 52-53.) Plaintiff states that the Defendant failed to investigate the incident and logged the wound on Plaintiff's leg as "self-inflicted" in the incident report. (Flamer dep., 5/22/97 at 54.)

Plaintiff also states that the Defendant told the nurse to log the wound as "self-inflicted" in the medical records. (Flamer dep., 5/22/97 at 55.) As a result of the wound being logged as "self-inflicted," Defendant was ordered by the medical department to take the Plaintiff's clothes, and Plaintiff claims he was placed in a non-isolation cell were he was seen naked by the female nurses. (Flamer dep., 5/22/97 at 57; 2/27/97 at 72.) Plaintiff asserts that being seen naked by the female nurses injured him by causing him mental suffering and embarrassment. (Flamer dep., 5/22/97 at 58-62.)

## **II. DISCUSSION**

Summary judgment shall be awarded "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 judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute regarding 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 evidence presented must be viewed in the light most favorable to the non-moving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

Liberty interests protected by the Fourteenth Amendment may arise from two sources -- the Due Process Clause itself or the laws or regulations of the States. Layton v. Beyer, 953 F.2d 839, 842 (3d Cir. 1992). A plaintiff who brings a § 1983 claim

under the Due Process Clause must allege and prove that (1) he was deprived of a protected liberty or property interest, (2) this deprivation was without due process, (3) the defendant subjected the plaintiff to this deprivation, (4) the defendant was acting under color of state law, and (5) the plaintiff suffered injury as a result of the deprivation. Sample v. Diecks, 885 F.2d 1099, 1113 (3d Cir. 1989). Due process protection for a state created liberty interest is limited to those situations where deprivation of that interest "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Griffin v. Vaughn, 112 F.3d 703, 706 (3d Cir. 1997) (quoting Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 2300 (1995)).

An inmate does not have a right to be placed in the cell of his choice. Sheehan v. Beyer, 51 F.3d 1170, 1175 (3d Cir. 1995) (citing Hewitt v. Helms, 459 U.S. 460, 468, 103 S. Ct. 864, 869 (1983); Montanye v. Haymes, 427 U.S. 236, 242, 96 S. Ct. 2543, 2547 (1976)). Furthermore, the Due Process Clause of the Fourteenth Amendment does not give a prisoner a liberty interest in remaining among the general prison population. Id. (citing Montanye, 427 U.S. at 242, 96 S. Ct. at 2547). A prison guard's viewing of the naked body of an inmate of the opposite sex does not violate the Constitution when the position to which the guard is assigned requires infrequent and casual observation, or observation at a distance, and the viewing is reasonably related to prison needs. See Grummett v. Rushen, 779 F.2d 491, 494-95

(9th Cir. 1985).

The Eighth Amendment's prohibition against cruel and unusual punishment protects prisoners against the "unnecessary and wanton infliction of pain." Whitley v. Albers, 475 U.S. 312, 319, 106 S. Ct. 1078, 1084 (1986)(citations omitted). To prove a violation of the Eighth Amendment, an inmate must show that he has been deprived of the minimal civilized measure of life's necessities and that such deprivation was sufficiently serious. Young v. Quinlan, 960 F.2d 351, 359-360 (3d Cir. 1992)(citations omitted). Furthermore, the plaintiff must prove that the prison official acted with deliberate indifference subjecting him to that deprivation. Id. Deliberate indifference has been defined as subjective recklessness, or the actor's conscious disregard of substantial harm that may result from his or her action. Farmer v. Brennan, 511 U.S. 825, 839, 114 S. Ct. 1970, 1980 (1994).

In the present case, Plaintiff had no liberty interest under the Due Process Clause of the Fourteenth Amendment in returning to the general prison population. Plaintiff also had no constitutional interest in not being observed naked by the female nurses while he was present in the medical ward. Therefore, Plaintiff's due process rights under the Constitution were not violated by Defendant's failure to return Plaintiff to the general prison population and the observation of Plaintiff by the female nurses while he was naked. Keeping Plaintiff in the medical ward and allowing him to be seen naked by the nurses also did not impose on him "atypical and significant" hardship given

the fact that he requested to be in the medical ward in the first place. Finally, Plaintiff has not produced sufficient evidence for a reasonable jury to conclude that such actions rose to a level of cruel and unusual punishment under the Eighth Amendment.

The facts surrounding Defendant's failure to investigate the incident involving the guard and the subsequent logging of Plaintiff's wound as self-inflicted also do not create a genuine issue of material fact concerning a violation of Plaintiff's due process rights or an Eighth Amendment violation. Given that (1) Plaintiff told the Defendant he did not want him to investigate the incident, (2) Plaintiff was originally sent to the medical ward to calm down upon his own request and (3) Plaintiff has a history of self-mutilation, it was not unreasonable for the Defendant to conclude that the wound may have been self-inflicted. Although circumstances could exist where a guard's failure to investigate, coupled with a deliberate intent to cause the inmate pain, would state a cause of action, under the evidence presented by Plaintiff in this case, no reasonable jury could find that the Defendant violated Plaintiff's due process rights under the Constitution or that the Defendant's actions constituted cruel and unusual punishment. A reasonable jury could also not find that Defendant's failure to investigate the incident imposed "atypical and significant" hardship on the Plaintiff given the circumstances of this particular case. Taking the evidence in the light most favorable to the Plaintiff, this court concludes that Plaintiff has failed to produce

sufficient evidence to create a genuine issue of material fact concerning a denial of due process or an Eighth Amendment violation. Therefore, Plaintiff has failed to support a cause of action under § 1983 against Defendant Quigley.

**C. Supplemental Jurisdiction**

The district court may decline to exercise supplemental jurisdiction over any related state law claims if the district court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3). Pursuant to the following Order, Defendant Quigley's Motion for Summary Judgment on Plaintiff's § 1983 claims will be granted. To the extent that Plaintiff has set forth any state law claims, this court declines to exercise supplemental jurisdiction over such claims, and any state law claims are dismissed without prejudice to Plaintiff asserting such claims in state court.

An appropriate Order follows.

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CAPTAIN LEVANDOWSKI; GEORGE	:	
HILL; SPIGERILLI; NURSE SHARON	:	
CORPORAL QUIGLEY,	:	
Defendants.	:	

ORDER

AND NOW, this        day of November, 1997 upon consideration of Defendant Quigley's Motion for Summary Judgment and Plaintiff's Answer thereto, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.