

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

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|                 |   |              |
|-----------------|---|--------------|
| DONALD WATKINS, | : |              |
|                 | : | CIVIL ACTION |
| Plaintiff,      | : |              |
|                 | : |              |
| v.              | : | No. 96-7153  |
|                 | : |              |
| C.O. W. NEWTON, | : |              |
|                 | : |              |
| Defendant.      | : |              |

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**MEMORANDUM**

ROBERT F. KELLY, J.

MARCH 24, 1998

This case arose out of an incident in which the Plaintiff, then an inmate incarcerated at the State Correctional Institution at Graterford ("Graterford"), claims he was disciplined in retaliation for exercising his constitutional right of access to the courts. Presently before this Court is the Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the reasons that follow, the Defendant's motion will be granted.

**Background**

On July 20, 1996, the Plaintiff was working in the Graterford kitchen as a line server. After serving breakfast to the C-Block inmate population, the Plaintiff ate and returned to his cell. The block was under lock-down at this time, requiring all inmates to remain in or near their cells, rather than wander freely throughout the block. Since the Plaintiff had been working in the kitchen, his cell was not locked. Rather than remaining in or near his cell, the Plaintiff walked across the block to another inmate's cell in violation of the lock-down.

The Plaintiff was at the other inmate's cell for approximately 10 minutes when the Defendant, a Correctional Officer assigned to C-Block, approached the Plaintiff and asked why he was not locked down in his cell. The Plaintiff responded that he was a kitchen worker whose cell door was open. The Defendant ordered the Plaintiff to return to his cell and stated that "paperwork" would follow, meaning that a misconduct report would be filed against the Plaintiff. (Dep. of Plaintiff at 37.)

The Plaintiff claims he responded that he would also follow with "paperwork," meaning that he was going to file a lawsuit against the Defendant. (Dep. of Plaintiff at 38.)<sup>1</sup> The Plaintiff claims that the Defendant took his statement as a threat and that the Defendant responded by stating that he was going to have the Plaintiff "shipped" to another institution. The Defendant then escorted the Plaintiff to his cell and locked it.

The Plaintiff was subsequently escorted to M-Block, a restricted housing area, where he was issued a Misconduct Report. The report was signed by the Defendant and charged the Plaintiff with being in an unauthorized area, disobeying an order, and threatening an officer. On July 23, 1996, the Plaintiff had a hearing on the Misconduct Report before a hearing examiner. At

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<sup>1</sup>The Defendant alleges that the Plaintiff's response was "you're going to make me get someone to take care of you here or on the street," and therefore was a threat of physical harm. (Def.'s Mot. for Summ. J. Ex. A.) For the purposes of this Motion, the Court will consider the facts as the Plaintiff alleges them.

the conclusion of the hearing, the examiner found the Plaintiff guilty of being present in an unauthorized area and threatening an officer, but not guilty of disobeying an order. The examiner sanctioned the Plaintiff to 30 days in disciplinary custody and loss of his job. The Plaintiff was then housed in disciplinary custody until August 19, 1996, when he was returned to the general population. He has since been released from Graterford.

The Plaintiff filed the instant action pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights under the First and Fourteenth Amendments. This Motion was filed on November 24, 1997. This Court granted the Plaintiff two separate extensions of time, the most recent one allowing him until February 23, 1998, to respond to this Motion. The Plaintiff failed to do so, and the Motion will now be decided on its merits.

#### **Standard**

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The nonmoving party cannot rest on the pleading, but must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); Celotex, 477

U.S. at 324. Summary judgment will not be granted "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). In this case, the Plaintiff, as the nonmoving party, is entitled to have all reasonable inferences drawn in his favor. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990), cert. denied, 499 U.S. 921 (1991).

The Plaintiff has failed to respond to the Motion for Summary Judgment despite the fact that this Court has granted him multiple extensions of time. But the Plaintiff's failure to respond does not entitle the Defendant to judgment automatically. Anchorage Assocs. v. Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990). Rather, the Motion must be evaluated on the merits, and judgment entered in favor of the movant only if "appropriate." Id. Therefore, the Motion may be granted only if the Defendant is entitled to "judgment as a matter of law." Id.

#### **Discussion**

The crux of the Plaintiff's claim is that the Defendant retaliated against him for threatening to file a lawsuit. (See Dep. of Plaintiff at 60-61.) Inmates have a constitutional right of access to the courts. Bounds v. Smith, 430 U.S. 817, 821 (1977); Gittlemacker v. Prasse, 428 F.2d 1, 7 (3d Cir. 1970). A prison official cannot retaliate against a prisoner for exercising this right, as retaliation for the exercise of constitutionally protected rights is itself a violation of the

Constitution actionable under § 1983. White v. Napoleon, 897 F.2d 103, 111-12 (3d Cir. 1990); Milhouse v. Carlson, 652 F.2d 371, 373-74 (3d Cir. 1981).

Qualified immunity shields government officials performing discretionary functions from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. Anderson v. Creighton, 483 U.S. 635, 638 (1987). An official is entitled to qualified immunity unless he reasonably should have known that the action he took within his sphere of official responsibilities would violate the plaintiff's constitutional rights. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

This Court must examine whether or not the Plaintiff alleges the violation of a clearly established constitutional right. Siegert v. Gilley, 500 U.S. 226, 231 (1991). The actions must be assessed in light of the legal rules that were clearly established at the time they were taken. Anderson, 483 U.S. at 639. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Id. at 640. If the law at the time of the conduct at issue "was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law forbade conduct not previously identified as unlawful." Rogers v. Powell, 120 F.3d 446, 454 (3d Cir. 1997) (quoting Harlow, 457 U.S. at 818-819). Thus, "the question is whether a reasonable

public official would know that his or her specific conduct violated clearly established rights." Grant v. City of Pittsburgh, 98 F.3d 116, 121 (3d Cir. 1996) (citing Anderson, 483 U.S. at 636-37)(emphasis in original).

While the right of access to the courts is clearly established, there is no controlling authority in this Court that would extend this right to include a right to threaten a correctional officer with a lawsuit. Indeed, there is little legal authority on this issue in any of the courts of appeals. When confronted with this issue, the Eighth Circuit declined to address whether prison officials could constitutionally punish an inmate for threatening legal action against a guard. See Goff v. Dailey, 991 F.2d 1437, 1439 (8th Cir. 1993), cert. denied, 510 U.S. 997 (1993). The Sixth Circuit, in an unpublished opinion, considered whether defendants were entitled to qualified immunity for disciplining an inmate who threatened them with a defamation action. Jones v. Michigan Department of Corrections, No. 89-2069, 1990 WL 130479 (6th Cir. Sept. 10, 1990). The court found that the defendants were entitled to qualified immunity because there was no "'clearly established law' that a prison work supervisor violates a constitutional principle insuring access to courts by firing a prisoner in retaliation for threatening a defamation suit." Id. at \*1.

In light of the lack of authority on this issue, it cannot be said that the Plaintiff had a clearly established right to threaten a Correctional Officer with a lawsuit. A reasonable

person in the Defendant's position could not have known that, by retaliating against the Plaintiff for threatening legal action, the Defendant would violate any clearly established constitutional right of the Plaintiff. Therefore, the Defendant is entitled to qualified immunity and summary judgment will be entered in his favor.

An appropriate Order follows.

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**ORDER**

AND NOW, this 24th day of March, 1998, upon consideration of Defendant's Motion for Summary Judgment, it is hereby ORDERED that:

1. Defendant's Motion is GRANTED;
2. the Clerk of Court is directed to list this case as CLOSED.

BY THE COURT:

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Robert F. Kelly, J.