IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MANSA A. MUNIR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 03-305-SLR
	)	
RICK KEARNEY, MIKE DELOY, VERONICA L. BURKE, and S/LT. M. HENNESSY	)	
	)	
Defendants.	)	

Mansa A. Munir, Georgetown, Delaware, Pro Se.

Ophelia M. Waters, Deputy Attorney General, State of Delaware Department of Justice, Wilmington, Delaware. Counsel for Defendants.

MEMORANDUM OPINION

Dated: March 31 , 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Mansa A. Munir is a Delaware prison inmate incarcerated at the Sussex Correctional Institute ("S.C.I.") in Georgetown, Delaware, and has been at all times relevant to his claim. On March 19, 2003, plaintiff filed a complaint with leave to proceed in forma pauperis, pursuant to 42 U.S.C. § 1983, against defendants Rick Kearney, Mike Deloy, Veronica L. Burke, and Staff Lieutenant M. Hennessy, alleging violations of the First, Fifth, and Fourteenth Amendments. (D.I. 2) Plaintiff seeks compensatory damages in the amount of thirty dollars per month for each month away from employment, punitive damages in the amount of $20,000 for each defendant, and an injunction halting the defendants from interfering with the practice of plaintiff's religion. (Id.) On May 19, 2003, the court ordered plaintiff to complete a United States Marshal-285 form summons for each defendant and the Attorney General of the State of Delaware, pursuant to 10 Del. C. § 3103(c). (D.I. 6) On July 3, 2003, plaintiff requested that defendant Hennessy make the following admissions within thirty days after service of the request. (D.I. 14) Plaintiff filed a motion for appointment of counsel on July 8, 2003, which was denied on January 8, 2004. (D.I. 15, 23) Also on July 8, 2003, plaintiff filed his first request for the production of documents and his first interrogatories to defendant Meloy. (D.I. 16, 17) On August 6,

2003, defendants filed a motion for protective order and a motion to dismiss for failure to state a claim upon which relief could be granted or in the alternative for summary judgment as a matter of law pursuant to Fed. R. Civ. P. 56(c). (D.I. 18, 19) Plaintiff filed an answer brief in the form of a letter, responding to defendants' motion for protective order and motion for summary judgment on September 16, 2003. (D.I. 20) The court ordered plaintiff to respond to defendants' motions for protective order, to dismiss, and summary judgment on or before February 12, 2004. (Id.) On February 10, 2004, plaintiff filed a motion for enlargement of time in order to respond to defendants' motions. (D.I. 24) The court granted plaintiff's motion for enlargement of time and ordered plaintiff to respond to defendants' motions by March 24, 2004. (D.I. 25) For the reasons that follow, the court denies the defendants' motion for protective order, denies defendants' motion to dismiss, and grants in part and denies in part defendants' motion for summary judgment.

II. BACKGROUND

While at S.C.I., plaintiff was enrolled in the Transformation through Education, Motivation, and Personal Orientation Program ("TEMPO Program"), a substance abuse program. (D.I. 2) Plaintiff alleges that on January 11, 2003 he received a disciplinary report from defendant Veronica Burke, a counselor

at S.C.I., for failure to complete an assignment while enrolled in the TEMPO Program. (Id.) Plaintiff contends that the assignment he failed to complete required him to think and write about the alternative choices that he could have made prior to being incarcerated and the impact these choices may have had on his life. (Id.) Plaintiff claims that completing that assignment would be a violation of his religious beliefs.[1] (Id.) Plaintiff alleges, "for me to answered [sic] this part of the essay knowing the sinful nature in the sight of Allah (God), is willful and blatant disobedience to Allah." (Id.) Failing to complete an assignment is a violation of the TEMPO Program. (D.I. 19, ex. 2) For this violation, plaintiff appeared before the disciplinary hearing officer, defendant Hennessy, and was found guilty. (D.I. 2) Plaintiff alleges that he was denied the opportunity to have resident Imam Shamsidin Ali and the Chaplain of S.C.I. present at his hearing. (Id.) Plaintiff contends that he attempted to show defendant Hennessy the passage in the Qu'ran, which justifies his reason for not completing the assignment. (Id.)

Following the disciplinary hearing, plaintiff appealed the decision to defendant Deloy, the Deputy Warden at S.C.I. (Id.) On January 22, 2003, plaintiff received a response stating that

[1]Plaintiff contends that writing a paper answering what alternative choices could have been made is an act of Shirk (associating others with Allah). (D.I. 2)

defendant Deloy concurred with the decision of defendant Hennessy. (Id.) Plaintiff alleges that defendant Deloy did not provide any information on what evidence was used to reach his decision. (Id.) Plaintiff contends that he then presented the matter to defendant Kearney, the Warden at S.C.I., and was informed that "there wasn't anything the grievance procedure could do to address this matter. The plaintiff would have to utilize the appeal process, which couldn't address the procedure[s] which were illegal." (Id.) Upon being found guilty of violating the rules of the TEMPO Program, plaintiff was transferred from minimum security to medium security and removed from his job assignment in the kitchen. (Id.)

Plaintiff asserts that "each of the defendants amitted [sic] knew nothing about 'Islam', should have consulted resident [I]mam, or contacted visiting Imam from Wilmington, Imam Rudolph Ali." (Id.) Plaintiff asserts that "it is common knowledge there are double standards at this facility when it comes to muslims and blacks versus white inmates." (Id.) Plaintiff also claims that the "Rules and Regulations this facility are constantly changed, re-written never approved by Commissioner of Corrections. . . . Inmates are not provided copies of revisions, nor never informed who made the revisions." (Id.) Finally, plaintiff alleges that defendant Hennessy based his decision of guilt on the fact that many Muslims have completed the TEMPO

Program. (Id.) Plaintiff alleges that the TEMPO Program did not always include the essay portion. (Id.) Plaintiff claims the essay portion was incorporated because Muslim inmates were complaining about being involved with the religious aspects of the program, which included reciting the Lord's prayer at the closing of each session. (Id.)

III. STANDARD OF REVIEW

Because the parties have referred to matters outside the pleadings, defendants' motion to dismiss shall be treated as a motion for summary judgment. See Fed. R. Civ. P. 12(b)(6). A court shall grant summary judgment only 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). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an

absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

The First Amendment of the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. According to the Third Circuit, "the mere assertion of a religious belief does not automatically trigger First Amendment protections, however. To the contrary, only those beliefs which are both sincerely held and religious in

nature are entitled to constitutional protection." Dehart v. Horn, 227 F.3d 47, 51 (3d. Cir. 2000). Moreover, as evidenced by the First Amendment, "prisoners have a constitutional right to free exercise of their religion." Williams v. Sweeney, 882 F. Supp. 1520, 1523 (E.D. Pa. 1995) (citing O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987)). Prisoners do not forfeit all of their constitutional protections because they have been convicted and confined to prison. Dehart, 227 F.3d at 50 (citing Bell v. Wolfish, 441 U.S. 520, 545 (1979)). However, an inmate only retains those rights that are not inconsistent with his status as a prisoner or with the legitimate penelogical objectives of the corrections system. Id. (citing Pell v. Procunier, 417 U.S. 817, 822-23 (1974)). Therefore, under Dehart, "inmates clearly retain protections afforded by the First Amendment, . . . including its directive that no law shall prohibit the free exercise of religion." Id. (citing O'Lone, 482 U.S. at 348).

In order for a prisoner to claim that the free exercise of his religion was violated, he must show that a prison rule, regulation or practice was not reasonably related to legitimate penelogical interests. O'Lone, 482 U.S. at 350 (citing Turner v. Safley, 482 U.S. 78, 89 (1987)). To determine reasonableness the Turner Court provided four factors:

> First, there must be a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it . . . .

> A second factor relevant in determining the reasonableness of a prison restriction . . . is whether there are alternative means of exercising the right that remain open to prison inmates . . . . A third consideration is the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally . . . . Finally, the absence of ready alternatives is evidence of the reasonableness of a prison regulation.

Williams v. Morton, 343 F.3d 212, 217 (3d. Cir. 2003) (citing Turner, 482 U.S. at 89). The regulation will be upheld and deemed valid if it fulfills these four factors. Id.

In the case at bar, the defendants, for the purpose of this motion, stipulated to plaintiff's sincere Islamic beliefs: "[D]efendants do not dispute that plaintiff sincerely believes in the teachings of Islam . . ." (D.I. 19) Since it has been stipulated that plaintiff's Islamic beliefs are sincere, plaintiff's claim must now be analyzed under the four Turner factors.

The court finds that there are genuine issues of material fact with respect to the reasonableness of the TEMPO Program under Turner, in particular, the availability to prisoners with sincerely held religious beliefs of alternative means to satisfy its requirements. In the absence of sworn affidavits supporting the reasonableness of the TEMPO Program under Turner, the court finds that summary judgment is inappropriate at this time.

In addition, since the court has denied defendants' motion

for summary judgment as to plaintiff's First Amendment claim, thereby allowing discovery to go forward, the court also denies defendants' motions for summary judgment with respect to plaintiff's Fifth and Fourteenth Amendment claims.

V. CONCLUSION

For the reasons stated, defendants' motion for summary judgment is denied. The motion for protective order is now moot because plaintiff will be granted an opportunity for discovery. An appropriate order shall issue.

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Defendants.	)	

O R D E R

At Wilmington, this 31st day of March, 2004, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendants' motion for protective order is denied as moot. (D.I. 18)

2. Defendants' motion to dismiss is denied. (D.I. 19-1)

3. Defendants' motion for summary judgment is denied. (D.I. 19-2)

4. Defendants' will have **30 days** to file an answer to plaintiff's complaint.

5. **Discovery.** All discovery in this case shall be initiated so that it will be complete on or before **June 18, 2004.**

6. **Application by Motion.** Any application to the Court

shall be by written motion filed with the Clerk. Unless otherwise requested by the Court, the parties shall **not** deliver copies of papers or correspondence to Chambers.

7. **Summary Judgment Motions.** All summary judgment motions and an opening brief and affidavits, if any, in support of the motion, shall be served and filed on or before **July 16, 2004.** Answering briefs and affidavits, if any, shall be filed on or before **July 26, 2004.** Reply briefs shall be filed on or before **August 5, 2004.**

Sue L. Robinson
United States District Court