IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LOUIS D. DICKERSON, Plaintiff, v. CAPT. J. BELANGER, ROBERT SNYDER, LARRY MCGUIGAN and C/Os HARRIS, ARCHIBALD, TERREY, MCGINNIS, SCOTT, STEVENS, CARPENTER, GARDELS and FOEUNTEZ, Defendants.	)	Civil Action No. 01-430-SLR

Louis D. Dickerson, Smyrna, Delaware, Pro Se.

Stuart B. Drowos, Deputy Attorney General, State of Delaware Department of Justice, Wilmington, Delaware. Counsel for Defendants.

MEMORANDUM OPINION

Wilmington, Delaware
Dated: October 15, 2003

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Louis D. Dickerson is a Delaware prison inmate housed at the Delaware Correctional Center in Smyrna, Delaware, and has been at all times relevant to his claim. On June 25, 2001, plaintiff filed a complaint with leave to proceed in forma pauperis pursuant to 42 U.S.C. § 1983 against Captain Belanger and Correctional Officers Harris, Terray, McGinnis and Archibald, alleging Eighth and Fourteenth Amendment violations. (D.I. 2) On or about August 14, 2001, plaintiff amended his complaint to include Eighth and Fourteenth Amendment allegations against Correctional Officers Stevens, Carpenter, Scott, Gardels and Forntez. (D.I. 6, 7) Plaintiff is seeking compensatory and punitive damages in addition to a transfer to another prison facility. (D.I. 6 at 4) Plaintiff is also seeking a temporary restraining order to stop alleged abuse in retaliation for filing the complaint. (D.I. 5) Defendants filed a motion to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 13) Because the parties presented matters outside the pleadings, the court reviewed the motion to dismiss as a motion for summary judgment. (D.I. 16) On June 10, 2002, this court granted defendants' motion to dismiss as to defendants in their official capacities, but denied the motion as to plaintiff's claims against defendants in their individual

capacities. (D.I. 17 at 9) Plaintiff's motion for appointment of counsel was also denied. (D.I. 17 at 9) In addition, the court set forth a scheduling order as follows: (1) all motions to join other parties and amend the pleadings should be filed on or before August 12, 2002; (2) all discovery should be completed on or before September 10, 2002; (3) all dispositive motions should be filed on or before October 10, 2002; (4) responses to these motions should be filed on or before October 24, 2002; and, (5) any reply briefs should be filed on or before November 7, 2002. (D.I. 17 at 9) On October 10, 2002, defendants entered a renewed memorandum in support of their motion to dismiss. (D.I. 18) Plaintiff failed to submit a response to defendants' renewed motion. On June 10, 2003, this court ordered that plaintiff show cause why defendants' motion to dismiss should not be granted. Plaintiff sent a letter to the court on June 16, 2003, which will be treated as plaintiff's response. (D.I. 20) For the reasons that follow, the court shall grant defendants' motion.

II. BACKGROUND

On April 24, 2001, plaintiff was disciplined for disorderly conduct, failure to obey, creating a health and safety hazard, and damage under $10.00 after he wedged a hard plastic dinner cup into his cell toilet and clogged the drain. (D.I. 14, Ex. C1-C7, Ex. D) Plaintiff pled guilty and received a sanction of ten days confinement to quarters. (Id.) Plaintiff alleges that

defendants Belanger, Scott, Gardels and Forntez hog tied him with nine pairs of handcuffs, shackled him, placed duct tape over his mouth, and put him in a cage, forcing him to sleep on nothing but a mattress for two days. (D.I. 6) Plaintiff also alleges that defendants threatened his life. (Id.) Defendants admit that they handcuffed plaintiff, but they deny using nine handcuffs and duct tape, and threatening plaintiff's life. (D.I. 14, Ex. D at 2) On April 25, 2001, plaintiff was removed from his cell for causing a disturbance on the tier. (Id.) Defendants claim that plaintiff was temporarily removed from his cell to avoid further damage to his cell. (D.I. 14 at 3) In a letter to the court, plaintiff further alleges that defendants mentally and physically abused him and threatened his life in retaliation for filing the complaint. (D.I. 5) Plaintiff also stated that the prison officials have refused to sign necessary legal paperwork, that he suffered a nervous breakdown, and that he was admitted to Delaware State Hospital. (Id.) Plaintiff claims he has a witness named Lawrence Collingwood who would testify that prison officials refused to sign the paperwork. (Id.) In support of their motion to dismiss, defendants have submitted copies of the incident reports and a single affidavit. Neither plaintiff nor defendants pursued discovery.

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

In cases where inmates challenge the use of force by prison officials as excessive, the Eighth Amendment is their key source of protection. See Whitley v. Albers, 475 U.S. 312, 327 (1986). The pivotal inquiry in claims of excessive force is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 7 (1992); see also Whitley, 475 U.S. 312. The court must consider: 1) the need for the application of force; 2) the relationship between the need and the amount of force that was used; 3) the extent of injury inflicted; 4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by responsible officials on the basis of the facts known to them; and 5) any efforts made to temper the severity of a forceful response. See Whitley, 475 U.S. at 321. Defendants cannot prevail on a motion for summary

judgment if "it appears that the evidence, viewed in the light most favorable to the plaintiff, will support a reliable inference of wantonness in the infliction of pain." Id. at 322; see also Sampley v. Ruettgers, 704 F.2d 491, 495 (10th Cir. 1983) (finding wantonness when prison guard intended to harm inmate).

A plaintiff can only recover on a § 1983 claim if he can show "intentional conduct by one acting under color of state law which subjected him to the deprivation of a federally secured right." Davidson v. Dixon, 386 F. Supp. 482, 487 (D. Del. 1974), aff'd, 529 F.2d 511 (3d Cir. 1975). The Eighth Amendment's proscription against cruel and unusual punishment "necessarily excludes from constitutional recognition de minimis uses of physical force provided that the use of force is not of a sort repugnant to mankind." Wright v. May, Civ. A. No. 96-47-LON (D. Del. Mar. 19, 1998). Thus, a plaintiff must establish that the injury is more than a "de minimis" injury and that the force was maliciously applied to cause harm. Id. The minimal requisite state of mind for an Eighth Amendment violation is deliberate indifference. See Young v. Quinlan, 960 F.2d 351, 359-60 (3d Cir. 1992).

It is a plaintiff's burden to prove that force was maliciously applied to cause harm while he was being restrained or that defendants acted with deliberate indifference. This court views claims of physical abuse with great seriousness and,

based upon the plaintiff's allegations, ordered discovery to proceed. (D.I. 17) Over the course of the past fifteen months, after being ordered to show cause why defendants' motion to dismiss should not be granted, plaintiff has failed to come forth with any evidence that he has sustained more than de minimis injury or that defendants acted with malicious intent to harm. Although plaintiff claimed in his briefs to this court that he had witnesses and evidence, he has failed to produce any supporting affidavits or witnesses, medical records, or other corroborating evidence to support his claims. Defendants have submitted incident reports, two affidavits, and medical records in support of their motion to dismiss. Consequently, as the facts presented, taken in the light most favorable to plaintiff, fail to support his claim, defendants' renewed motion to dismiss must be granted.

V. CONCLUSION

For the reasons stated, defendants' renewed motion to dismiss plaintiff's claims is granted. An appropriate order shall issue.

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O R D E R

At Wilmington, this 15th day of October, 2003, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendants' renewed motion to dismiss (D.I. 18) is granted.

2. The clerk is directed to enter judgment in favor of defendants and against plaintiff.

Sue L. Robinson
United States District Court