

83  
9/14/01  
sm

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

DAVID ROWKOSKY,

Plaintiff

v.

LT. SUTLIFF, *et al.*,

Defendants

CIVIL ACTION NO. 3:CV-99-0847

(JUDGE CAPUTO)

FILED  
SCRANTON

SEP 14 2001

PER

DEPUTY CLERK

MEMORANDUM

The plaintiff, David Rowkosky, an inmate incarcerated in the State Correction Institution at Dallas, Pennsylvania, ("SCI Dallas") filed a complaint in the Court of Common Pleas of Luzerne County, Pennsylvania pursuant to 45 U.S.C. § 1983. Named as defendants were the following Department of Corrections employees at SCI Dallas: Corrections Officer ("CO") Lt. Ned Sutliff; CO Cpt. Thomas Davenport, CO Frantz, CO Philbin, and Psychological Services Specialist Roxanna Holl.<sup>1</sup> Defendants filed a petition for removal on May 24, 1999, paid the required filing fee, and the action was transferred to this Court. (Doc. 1).

Rowkosky filed an amended complaint (Doc. 51) on November 15, 2000, that was accepted by this Court on November 22, 2000. (Doc. 53). In his amended complaint, plaintiff

<sup>1</sup>Throughout the various documents submitted to this Court, defendant Philbin is referenced as Philban or Philman. According to his declaration, his last name is Philbin. Defendant Holl is identified by plaintiff as Hall. Based on her declaration, she has married since the filing of the complaint and her last name is Holl Dinesan.

raises no factual allegations against defendants Frantz and Philbin nor are they listed as named defendants. Accordingly, Frantz and Philbin are dismissed without prejudice from this action. Plaintiff added as defendants the Program Review Committee ("PRC") and its members Thomas Stachelek, John Grutkowski, and Stanley Gabriel. All of the defendants were served but the additional named defendants. Because plaintiff has failed to serve named defendants within 120 days of the filing of his complaint, defendants Stachelek, Grutkowski, Gabriel, and the PRC are dismissed without prejudice from this action pursuant to Fed.R.Civ.P. 4(m). Discovery in this action has been completed.

Plaintiff filed a motion and supporting brief for summary judgment on April 18, 2001. (Doc. 66). Defendants filed their own motion for summary judgment on April 30, 2001. (Doc. 68). Defendants, due to two family illnesses in their attorney's immediate family, sought three enlargements of time to file the brief in opposition to plaintiff's motion for summary judgment as well as the brief in support of their own motion for summary judgment. (Docs. 67, 70, 72). Two of the motions for enlargement of time have been granted but the third motion is still pending before the Court. Since defendants have filed their briefs, the motion for enlargement of time will be granted *nunc pro tunc*.

Plaintiff's complaint alleges defendants violated the Eighth Amendment's prohibition against cruel and unusual punishment in their failure to protect him from another inmate. Rowkosky further contends that the defendants retaliated against him for filing grievances pertaining to the assault. Plaintiff also asserts he was denied due process when he was transferred from the Restricted Housing Unit ("RHU") to the Psychological Observation Room

("POR"). It appears that plaintiff is also alleging the conditions in the POR were unsanitary. As to relief sought, plaintiff seeks declaratory judgment, injunctive relief requiring expungement of false misconduct reports, compensatory and punitive damages, and any other relief this Court deems proper and just. (Doc. 51).

In their motion for summary judgment, defendants first contend that this Court should dismiss the defendants from this action in their official capacities pursuant to the Eleventh Amendment. Defendants also argue that plaintiff has failed to allege sufficient facts to establish a violation of his Eighth Amendment right to be free of cruel and unusual punishment. Defendants further assert that Rowkosky has failed to allege sufficient facts to state a viable claim of unlawful retaliation. Defendants contend that plaintiff has failed to establish a Fourteenth Amendment violation of his right to due process. Lastly, defendants assert that Rowkosky's unsanitary claim is frivolous since he has failed to present any evidence in support of his claim.

Although Rowkosky's brief in opposition to the defendants' motion for summary judgment is now long overdue, he has neither made an appropriate filing nor requested an extension of time in which to do so.<sup>2</sup> The Court will nevertheless make an analysis on the merits. *Anchorage Assoc. v. V.I. Bd. of Tax Review*, 992 F.2d 168, 175 (3d Cir. 1990).

---

2A standing practice order (Doc. 2), which is intended to fully inform the parties to a civil action of their briefing and other responsibilities pursuant to the Local Rules of Court and the Federal Rule of Civil Procedure 56, was sent to plaintiff on May 24, 1999. Plaintiff filed a "motion to extend time to and including July 23, 2001" to file a brief in opposition on June 28, 2001. (Doc. 80). This Court granted Rowkosky's motion for enlargement of time on July 6, 2001. (Doc. 81). Plaintiff has made no further contact with this Court.

Based on the undisputed facts presented by the defendants, which includes plaintiff's deposition, plaintiff has failed to present evidence to show that defendants' conduct rises to the level of constitutional violations and, accordingly, defendants' motion for summary judgment will be granted.<sup>3</sup>

## DISCUSSION

### A. Standard of Review

Summary judgment is appropriate when supporting materials, such as affidavits and other documentation, show there are no material issues of fact to be resolved, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The Supreme Court has ruled that Fed. R. Civ. P. 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp v. Catrett*, 477 U.S. 317 (1986). The Court further stated that "Rule 56 (e) . . . requires the non-moving party to go beyond the pleadings and by [his] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324. The Supreme Court in *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986), has held that the

---

<sup>3</sup>Also pending before this Court is a motion to vacate order of June 6, 2001 filed by defendants on June 12, 2001. (Doc. 74). The court order (Doc. 73) pertained to a motion to compel filed by plaintiff. This Court had previously addressed the motion to compel by order dated February 15, 2001 in which this Court dismissed the motion as moot. Therefore, defendants motion to vacate will be granted and the Court order dated June 6, 2001 (Doc. 73) will be vacated.

opposing party must adduce more than a mere scintilla of evidence in its favor, and cannot simply reassert factually unsupported allegations contained in its pleadings. See *Celotex*, 477 U.S. at 325. Further, an opposing party cannot defeat summary judgment simply by asserting that a jury might disbelieve an opponent's affidavit. *Liberty Lobby*, 477 U.S. at 256-57.

The moving party can discharge the burden by showing an absence of evidence to support the non-moving party's case. *Celotex*, 477 U.S. at 325. If the evidence in favor of the non-moving party is merely colorable or not significantly probative, summary judgment should be granted. *Boyle v. County of Allegheny*, 139 F.3d 386, 393 (3d Cir. 1998) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). The non-moving party must submit his own evidentiary materials showing that a genuine issue exists. *Celotex*, 477 U.S. at 324. Therefore, when the movant has supported his motion with affidavits, the opponent "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e).

With these principles in mind, the Court will first set forth the allegations in the complaint.<sup>4</sup> The Court will then set forth the materials submitted by the defendants to attempt to demonstrate that defendants are entitled to judgment.

Plaintiff contends that on August 9, 1998, he was assaulted by an inmate subsequently

---

<sup>4</sup>Because plaintiff filed an "amended" complaint and not a supplement to his original complaint, the amended complaint is complete in itself and supercedes any prior pleadings. Therefore, this Court will only review the allegations stated in plaintiff's amended complaint.

identified as John Floyd. (Doc. 51, ¶ 1). Plaintiff concedes that when he was asked by defendant Sutliff if he knew who assaulted him, Rowkosky stated he "could not make a possitive (sic) identification, because he was attacked from behind and was dazed." (*Id.*, ¶ 4). Plaintiff alleges that CO Philbin stated to Sutliff that he could identify inmate Floyd as the assailant. (*Id.*, ¶ 5). Plaintiff further asserts that Sutliff stated that Floyd was an informant and that Rowkosky "was a drug addict who was hight (sic) on drugs and didn't know what he was saying." (*Id.*, ¶ 6). Rowkosky contends that Philbin stated he saw Floyd assault plaintiff and could not release Floyd in general population. (*Id.*, ¶ 7).

Plaintiff asserts that Sutliff insisted that Floyd be placed in general population. Rowkosky also contends that Sutliff made up the excuse that plaintiff injured himself while playing handball. (*Id.*, ¶¶ 7, 8).

Plaintiff states he was taken to the hospital and treated. Plaintiff asserts that he refused to sign a statement stating he had fallen while playing handball. (*Id.*, ¶ 9). Plaintiff states he was then placed in the RHU and issued a false misconduct report charging him with possession of contraband. (*Id.*, ¶ 10).

Plaintiff alleges that Sutliff came to his cell on August 24, 1998 and threatened plaintiff with more falsified misconduct reports; cell searches, and harsher conditions of confinement if plaintiff continued to file grievances about the assault. (*Id.*, ¶ 11).

Plaintiff states that on October 29, 1998, he appeared before the PRC which consisted of defendants Stachelek, Grutkowski, and Gabriel. Plaintiff contends he asked them why the assault was being covered up by Sutliff and informed them of his fear for his safety and fear

of double celling as a result of the assault. Plaintiff asserts the committee took no action and threatened to issue a misconduct report if he refused to double cell. (*Id.*, ¶¶ 12,13).

Plaintiff states that defendant Davenport came to his cell on October 29, 1998 and informed plaintiff that he was placing another inmate in the cell with plaintiff. Plaintiff asserts that he told Davenport he was in fear of his safety, and the inmate may be the assailant or a friend of the assailant. Plaintiff contends that Davenport told him he can have a cell mate or be "forcefully placed" in the POR and this would teach him a lesson about complaining about Sutliff. Plaintiff asserts that Davenport ordered plaintiff taken to the POR and issued a misconduct report for refusing to accept a cell mate. (*Id.*, ¶s 14-16). Plaintiff contends that Defendant Holl contributed to the retaliation by arbitrarily approving his placement in the POR. (*Id.*, ¶ 17).

Plaintiff states he was released from the POR and returned to the RHU on November 3, 1998. Plaintiff contends that a week later, defendant Davenport came to his cell and stated that if plaintiff did not take a cell mate, Davenport and Sutliff were "going to break plaintiff by making sure that plaintiff received disciplinary time to last him for the rest of his life." (*Id.*, ¶ 18). Rowkosky asserts that Davenport's and Sutliff's threats "took the form of refusing plaintiff adequate bedding and clothing during the winter month's (sic); fabricated misconduct reports; isolating him from communicating (sic) with other prisoners; placing plexiglass on his cell door, this (sic) restricting communication (sic) and air circulation; frequent arbitrary (sic) searches (sic) of his cell, and in the process destroying property, and leaving his cell in shamble (sic) and disarray." (*Id.*, ¶ 19). Plaintiff also contends that other correction officers would state that

Davenport or Sutliff "sent us to pay you a visit, we're going to wear you down so you best leave our (CSI) alone." (*Id.*, ¶ 20).

In addition to their brief in opposition to plaintiff's motion for summary judgment and brief in support of their motion for summary judgment, defendants filed a statement of material facts (Doc. 77) and documents in support of their motion for summary judgment consisting of the following: unsworn declarations of defendants Davenport and Holl, unsworn declaration of CO Philbin; unsworn declaration of James Kaminski, counselor; unsworn declaration of Georgine Leachey, records supervisor; unsworn declaration of Barbara Ann Nash, clerk typist III; and the deposition of David Rowkosky. (Doc. 78, exhs. 1-7).

Defendants agree that on August 9, 1998, an incident occurred on C-Block at SCI Dallas involving plaintiff. Defendants also agree that CO Philbin saw plaintiff "bounce off the wall" on the range of C-Block. The defendants further agree that soon after the incident, Rowkosky and inmate Floyd were escorted to the Control area for an interview with defendant Sutliff. Defendants agree that plaintiff could not identify his assailant. Defendants also agree that it is not disputed that Sutliff let inmate Floyd go back to C-Block without sanctions and plaintiff was sent to the RHU. (Doc. 77, Statement of Material Facts).

CO Philbin completed an Employee Report of Extraordinary Occurrence regarding the assault. The type of occurrence was identified as an "inmate injury assault." Philbin noted that he observed "Rowkosky bounce against the range wall in the vicinity of 5 cell." Philbin stated that by the way plaintiff moved "it was apparent he had been struck." The report states that a "rock in sock" was found in Rowkosky's cell. (Doc. 78, exh. 5, p. 10-11).

An official Report of Extraordinary Occurrence was completed by the shift commander. The report notes that Rowkosky received a 2" cut above the left eye. Actions taken by staff was plaintiff's cell was searched and they confiscated a "rock in a sock"; Rowkosky submitted to a urinalysis; and plaintiff was confined to the RHU pending a hearing. The report states that CO Philbin saw Rowkosky "bounce" off the wall. The report further states that due to the crowded area, the assailant could not be identified but inmate "Floyd was in position to have been identified." The report indicates that Rowkosky stated he fell and, since Floyd showed no signs of having been in the altercation, was returned to the block. The report notes that Rowkosky appeared to be under the influence of drugs and was given a urinalysis. (*Id.*, p. 2-2a).

A "medical incident/injury report" was completed during Rowkosky's examination. The report notes that plaintiff's explanation for his injury was "he fell playing hand-ball." Rowkosky had a laceration above his left eye. (*Id.*, p. 3).

A misconduct report was completed regarding the search of plaintiff's cell and the discovery of contraband. The report states that Rowkosky admitted the "rock in the sock" belonged to him. Rowkosky was confined in the RHU pending a hearing regarding the contraband. (*Id.*, p. 4). The disciplinary hearing report indicates that Rowkosky plead guilty to possessing contraband. (*Id.*, p. 25).

A lab report dated August 12, 1998 states that plaintiff tested positive for opiates. (*Id.*, p. 29). A misconduct report was completed on August 13, 2001 stating that plaintiff's urinalysis came back positive for opiates. (*Id.*, p. 27). A medical report dated August 13, 1998

indicates that plaintiff was not on prescribed medication for the past seven (7) days. (*Id.*, p. 31). The disciplinary hearing report indicates that Rowkosky was shown the report and plead guilty to possession or use of dangerous or controlled substance. (*Id.*, p. 28).

The PRC held a periodic review on September 3, 1998: Inmates receive a regular thirty (30) day review as a progress report and provide specific rationale for continued placement or for transfer. (*Id.*, p. 20). The next review was held on October 1, 1998 which plaintiff declined to attend. (*Id.*, p. 21). Plaintiff was next reviewed on October 29, 1998. (*Id.*, p. 22). A PRC report was completed regarding Rowkosky's transfer to the POR and return to the RHU. The report states that plaintiff's POR adjustment was satisfactory but "characterized by a surly and abusive attitude toward staff." (*Id.*, p. 23).

A Report of Extraordinary Occurrence was completed regarding plaintiff's placement in the POR. The report states that Rowkosky became aggressive and irritated when he was informed that he had to double cell. The report indicates that plaintiff stated "he would hurt anybody, staff or inmate, that came to his cell." The report states that a cell extraction team was assembled and plaintiff was placed in the POR due to his emotional stability. The report notes that Rowkosky received a misconduct for threatening an employee or another person, refusing to obey an order, and "other." (*Id.*, p. 34-35).

Defendants also included a Report of Extraordinary Occurrence regarding an incident dated June 16, 1999. The report states that two corrections officers were escorting an inmate back from the shower and, while passing Rowkosky's cell, one of the officers was hit in the face and body by a liquid substance smelling like urine and feces. (*Id.*, p. 55-56). According

to a misconduct report, Rowkosky's cell was searched and plaintiff admitted to having contraband consisting of a baby oil bottle which had been altered to be used as a sprayer. (*Id.*, p. 63).

Defendants submitted a copy of the transcript of Rowkosky's deposition taken at SCI Dallas on May 15, 2000. Rowkosky's states that he submitted grievances regarding the assault and related misconducts but never received a response. (*Id.*, exh. 6, p. 27-28). When asked if he had received any misconducts, plaintiff stated, "[y]ou name it, I got it." (*Id.*, p. 21). Plaintiff stated that when an inmate is extracted from his cell, the inmate is usually taken to the POR. Rowkosky claims the prison staff does that to cover themselves. (*Id.*, p. 63-64). Rowkosky concedes that he did not write a grievance regarding the conditions of the POR. Furthermore, Rowkosky states he asked for a blanket once. (*Id.*, p. 70).

When questioned about the assault, plaintiff agreed that he had no inkling that somebody was going to assault him. Rowkosky further admitted that the corrections officers could not have known that he was going to be assaulted. (*Id.*, p. 74).

Furthermore, plaintiff admitted to having a rock in the sock. (*Id.*, p. 96). Rowkosky also admitted that plexiglass was placed before his cell because he had squirted an inmate with feces and urine. (*Id.*, p. 103).

As noted above, plaintiff has failed to respond to the defendants' motion for summary judgment, thus, the material facts set forth by the defendants may be accepted as

true.<sup>5</sup> *Shulz v. Celotex*, 942 F.2d 204 (3d Cir. 1991); *Anchorage Associates v. V.I. Bd. of Tax Review*, 922 F.2d 168, 175 (3d Cir. 1990). A determination must next be made as to whether the defendants, on those undisputed facts, is entitled to judgment as a matter of law. As the Court will set forth more fully below, even accepting the plaintiff's statement of claim as true, defendants are entitled to judgment in their favor.

#### B. Failure to Protect Claim

The Eighth Amendment's prohibition against cruel and unusual punishment protects inmates from the "unnecessary and wanton infliction of pain." *Whitley v. Albers*, 475 U.S. 312, 319 (1986). An Eighth Amendment claim against a prison official must meet two requirements: (1) "the deprivation alleged must be, objectively, sufficiently serious;" and (2) the "prison official must have a sufficiently culpable state of mind." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). In prison conditions cases, "that state of mind is one of 'deliberate indifference' to inmate health or safety." *Id.* Under *Farmer*, deliberate indifference is a subjective standard in that the prison official must actually have known or been aware of the excessive risk to inmate safety. *Beers-Capitol v. Whetzel*, 2001 WL 640713, \*1 (3d Cir. June 11, 2001). This requirement of actual knowledge means that "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists;

---

<sup>5</sup>Although plaintiff incorporated a statement of fact within his motion for summary and supporting brief, his motion was filed prior to defendants and, therefore, plaintiff has not responded to the additional facts presented by defendants.

and he must also draw the inference." *Farmer* at 837. A defendant's knowledge of a risk can be proved indirectly by circumstantial evidence. *Beers-Capitol* at \*6.

Plaintiff contends that defendants failed to protect him from the assault of another inmate. However, in his own deposition, Rowkosky admits that not only was he unaware of any reason why another inmate would assault him but that the corrections officers also would have no reason to believe that any inmate intended to assault him on August 9, 1998. Applying the standard for summary judgment and Fed. R. Civ. P. 56(c), plaintiff is unable to demonstrate, under *Farmer*, that he was incarcerated under conditions posing a substantial risk of serious harm and that defendants actually knew or were aware of any excessive risk to Rowkosky's safety.

Furthermore, plaintiff's allegations concerning Sutliff's decision to release plaintiff's alleged assailant into the general population after the assault does not transform his Eighth Amendment claim into a viable claim. Rowkosky fails to establish that the release of inmate Floyd poses a significant risk of serious harm to him or that defendants knew of and consciously disregarded such risk. Again, in his own deposition, plaintiff states he does not know inmate Floyd and knows of no reason why Floyd would want to assault him. (Doc. 78, exh. 6, p. 74). Although Floyd was in a position to be the assailant, there has been no finding that he was the assailant. Accordingly, summary judgment will be granted on behalf of defendants regarding plaintiff's Eighth Amendment failure to protect claim.

### C. Retaliation

Plaintiff alleges that defendants retaliated against him for exercising his "right to seek

safe housing, and be free from potential assaults." (Doc. 51, p. 5). Plaintiff contends the retaliation took the following forms: (1) refusing him adequate bedding and clothing during the winter months; (2) fabricating misconduct reports against him; (3) isolating him from communicating with other prisoners; (4) placing Plexiglas on his cell door to restrict air circulation and communication; and (5) frequently searching his cell, destroying his property, and leaving his cell in shambles. Plaintiff asserts the retaliation constituted cruel and unusual punishment and violated his due process rights.

The Third Circuit Court of Appeals has addressed the issue of retaliation claims regarding government actions. In *Allah v. Seiverling*, 229 F.3d 220, 224-25 (3<sup>rd</sup> Cir. 2000), the court held that, "government actions, while standing alone do not violate the Constitution, may nonetheless be constitutional torts if motivated in substantial part by a desire to punish an individual for the exercise of a constitutional right," (quoting *Thaddeus-X v. Blanter*, 175 F.3d 378, 386 (6<sup>th</sup> Cir. 1999) (en banc)). Accordingly, the law of this circuit is clear that a prisoner litigating a retaliation claim need not prove that he had an independent liberty interest in the privileges that he was denied. *Allah*, 229 F.3d at 225.

Recently, the Third Circuit revisited government action-retaliation claims and set forth the elements of a prisoner's cause of action and the burden of proof he must carry to succeed. *Rauser v. Horn*, 241 F.3d 330 (2001). As a threshold matter, a prisoner-plaintiff must prove that the conduct which lead to the alleged retaliation was constitutionally protected. *Id.* at 333; citing *Thaddeus-X*, 175 F.3d at 389; see also *Drexel v. Vaughn*, 1998 WL 151798 at \*7 (E.D.Pa.)

If the prisoner-plaintiff meets the threshold matter, he must then show he suffered some "adverse action" at the hands of prison officials. *Id.* Under *Allah*, a prisoner-plaintiff satisfies this requirement by demonstrating that the action "was sufficient to deter a person of ordinary firmness from exercising his [constitutional] rights." *Allah*, 229 F.3d at 225.

Once these two threshold criteria are met, the prisoner must prove a causal link between the exercise of the constitutional right and the adverse action against him. The Third Circuit in *Rausser* held that once a prisoner demonstrates that his exercise of a constitutional right was a substantial or motivating factor in the challenged decision, the prison officials may still prevail by proving that they would have made the same decision absent the protected conduct for reasons reasonably related to a legitimate penological interest. *Id.* at 334.

In *Rausser*, plaintiff refused to participate in Alcoholics Anonymous ("AA") and/or Narcotics Anonymous ("NA") on the basis of his own religious beliefs.<sup>6</sup> Rausser was required to complete the programs before the DOC would recommend release to the Board. Rausser claimed the DOC took three actions in retaliation for his insistence on religious freedom: (1) the DOC transferred Rausser from its correctional facility in Camp Hill to a facility far from his home and family; (2) the DOC changed his job classification from the highest level attainable by an inmate to the lowest possible designation; and (3) the reclassification was accompanied by a dramatic drop in his rate of pay. *Id.* at 332. Finally, the DOC refused to recommend Rausser for parole due to incompleteness of treatment programs. *Id.* In his case, the district court

---

<sup>6</sup>Both AA and NA are centered on a belief in a Supreme Being and require participants to accept God as a treatment for their addictions.

determined that Rauser's refusal to participate in a religious program was protected by the First Amendment and that conclusion was not challenged on appeal. *Id.* at 333.

Also in *Rauser*, the prison officials did not dispute the facts that Rauser was denied parole, transferred to distant prison where his family could not visit him regularly, and penalized financially, so the court found that Rauser presented sufficient evidence of adversity to survive summary judgment on that issue. *Rauser*, 241 F.3d at 333.

Applying the *Rauser* standard to the facts of this case, Rowkosky has failed to assert a proper claim of retaliation against the defendants. Although plaintiff may get past the threshold questions, Rowkosky has failed to demonstrate a causal link between the adverse action he suffered to the exercise of a constitutional right. See e.g., *Anderson v. Davila*, 125 F.3d 148 (1997) (allegations that prisoner was subjected to disciplinary actions as retaliation for initiating a civil rights suit establishes an infringement of prisoner's First Amendment right to access to the courts); *but cf. Baker v. Lyles*, 904 F.2d 925, 929 (4<sup>th</sup> Cir. 1990) (noting a correctional officer cannot be held liable for bringing misconduct charges, even if false, when discipline is imposed by a hearing officer after a hearing.) Again, in his own deposition, plaintiff admits that Plexiglas was placed on his cell door for throwing feces and urine at an inmate. Other than asking for a blanket on one occasion, Rowkosky fails to present any evidence, nor did he file any grievances, regarding inadequate bedding or clothing. As to the alleged false misconduct reports, plaintiff plead guilty to the misconduct reports at issue and admitted to all the violations but the dirty urinalysis during his deposition. Although these acts can be deemed adverse, plaintiff failed to causally link them to exercising a constitutional right.

Accordingly, plaintiff fails to demonstrate that his exercise of a constitutional right was a substantial or motivating factor in any of those actions.

Furthermore, plaintiff's placement in the RHU and briefly in the POR was reasonably related to a legitimate penological interest. Rowkosky was placed in the RHU because of his misconduct charges. As to misconduct charges, prison officials have a legitimate penological interest in enforcing the regulations of SCI Dallas. Plaintiff admitted in his deposition that it was common practice for inmates to be placed in the POR after a cell extraction. Plaintiff made threats to the safety of staff and fellow inmates which resulted in his cell extraction and placement in the POR. Therefore, any isolation from other inmates was the result of plaintiff's misconduct.

Prison officials also have a legitimate penological interest in searching inmate cells to restrict contraband in the prison environment. Rowkosky admits to having a rock in a sock, making wine in his cell at least four to six times, and creating a "sprayer" for urine and feces. Based on the numerous admitted contraband violations by plaintiff, staff at SCI Dallas had a reasonable, legitimate penological basis for conducting searches of his cell. Because plaintiff had failed to demonstrate a causal link for the adverse actions and defendants have proven legitimate penological interests for housing Rowkosky in the RHU/POR and searches of plaintiff's cell, judgment shall be granted in favor of the defendants regarding Rowkosky's retaliatory claim.

**D. Due Process Claim**

In order to determine whether a due process violation has occurred, a determination

must initially be made that a protected liberty interest exists and, if so, what process is due. See *Layton v. Beyer*, 953 F.2d 839, 842 (3d Cir. 1992). A protected liberty interest may be created by either the Due Process Clause itself or by state law. See *Sandin v. Conner*, 515 U.S. 472 (1995). The United States Supreme Court stated that due process requirements would only apply where the situation "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.*

Plaintiff contends that his transfer from the RHU to the POR violated his due process rights. In *Sandin*, the Supreme Court stated that "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law." *Id.* at 2301. Plaintiff does not have a protected liberty interest in remaining in the general prison population. See *Griffin v. Vaughn*, 112 F.3d 703 (3d Cir. 1997) (holding disciplinary confinement for as long as fifteen months does not deprive an inmate of a liberty interest and thus does not entitle inmate to procedural due process protections.) Nor does Rowkosky have a protected liberty interest in a single cell housing assignment. *Rhodes v. Chapman*, 452 U.S. 337 (1981). Since plaintiff did not have any protected liberty interest that was affected by his placement in the POR, he was not entitled to any due process protections and his claim is dismissed with prejudice.

Plaintiff also appears to allege that while confined at the POR, he was deprived of exercise and showering for six days and confined to a roach infested filthy cell, that had a feces encrusted toilet and wall, which he was not allowed to clean. Rowkosky fails to identify any individual defendant(s) as being responsible for or involved in any of the alleged

deprivations. Plaintiff also fails to produce any evidence to substantiate these claims. Upon review of Rowkosky's medical records during the time he was in the POR, plaintiff either refused to cooperate with the medical staff, on many occasions "refused to answer" their inquiries, and, when he did answer their questions, indicated he had "no complaints." (Doc. 78, exh. 7). Because plaintiff fails to provide any evidence of such conditions, summary judgment will be granted for defendants on that claim as well.

Accordingly, defendants Philbin and Frantz are dismissed without prejudice from this action since plaintiff did not name them in his amended complaint. Defendants Stachelek, Grutkowski, Gabriel, and the PRC are dismissed without prejudice from this action pursuant to Fed.R.Civ.P. 4(m). Summary Judgment will be entered in favor of the remaining defendants. An appropriate Order is attached.

  
A. RICHARD CAPUTO  
United States District Court

Dated: September/4, 2001

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

DAVID ROWKOSKY,

Plaintiff

v.

LT. SUTLIFF, *et al.*,

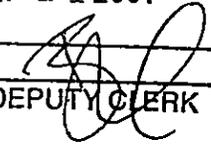
Defendants

CIVIL ACTION NO. 3:CV-99-0847

(JUDGE CAPUTO)

FILED  
SCRANTON

SEP 14 2001

PER   
DEPUTY CLERK

ORDER

NOW, THEREFORE, THIS <sup>14<sup>th</sup></sup> DAY OF SEPTEMBER, 2001, for the reasons set forth

in the foregoing Memorandum, IT IS HEREBY ORDERED THAT:

1. Defendants Frantz and Philbin are dismissed without prejudice from the above captioned case since plaintiff did not name them as defendants in his amended complaint.
2. Defendants Stachelek, Grutkowski, Gabriel, and the PRC are dismissed without prejudice from this action pursuant to Fed.R.Civ.P. 4(m).
3. Defendants' motion for summary judgment, (Doc. 68), is granted. Plaintiff's motion for summary judgment, (Doc. 66), is denied. Judgment is hereby entered in favor of the defendants and against plaintiff.
4. Defendants' motion, (Doc. 74), to vacate court order, (Doc. 73), dated June 6, 2001, is granted. The Clerk of Court is directed to vacate the June 6, 2001 (filed June 7, 2001) court order.

5. Defendants' motion for enlargement of time to file brief in opposition to plaintiff's motion for summary judgment and brief in support of defendants' motion for summary judgment, (Doc. 72), is granted *nunc pro tunc*.
6. The Clerk of Court shall close this case.
7. Any appeal taken from this order will be deemed frivolous, without probable cause, and not taken in good faith.



A. RICHARD CAPUTO  
United States District Court