

Security

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

MICHAEL E. KEELING,

Plaintiff : No. 4:CV-00-0448

v. : Complaint Filed 3/8/00

MS. PUTMAN, ET AL., : (Judge Muir)

Defendants :

ORDER

January 8, 2001

FILED
MIDDLE DISTRICT PA
MARY E. D... CLERK
Per [Signature] Deputy Clerk

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On March 8, 2000, Plaintiff Michael Evan Keeling, an inmate confined at the State Correctional Institution, Dallas, Pennsylvania (SCI-Dallas"), commenced this action by filing a complaint pursuant to 42 U.S.C. § 1983. Keeling is presently incarcerated at the State Correctional Institution, Frackville, Pennsylvania. The defendants are the following individuals employed by the Pennsylvania Department of Corrections: Putman, a Unit Manager at the SCI-Dallas; Keller and Dean, Counselors at SCI-Dallas; Stachelek, Deputy Superintendent for Centralized Services at SCI-Dallas; Demming, Inmate Program Manager at SCI-Dallas; Larkins, former Superintendent at SCI-Dallas; Jones, a major at SCI-Dallas; Burnett, Grievance Coordinator at SCI-Dallas; Kneiss, Deputy Superintendent for Facilities Management at SCI-Dallas; Varner, Superintendent at SCI-Dallas; Bitner, Chief Hearing Examiner for the Department of Corrections; and

Horn, Commissioner of the Department of Corrections. Keeling in his complaint claims he was improperly denied single cell status. The case was assigned to us but referred to Magistrate Judge Thomas M. Blewitt for preliminary consideration.

On May 19, 2000, the defendants filed a motion to dismiss. On June 7, 2000, Keeling filed a motion for a default judgment. On October 3, 2000, Keeling filed a motion for an extension of time to file objections to the report of Magistrate Judge Blewitt. By order of October 10, 2000, Keeling was granted an extension of time until November 6, 2000, to file objections. On November 7, 2000, Keeling filed objections. After being granted two extension of time defendants filed a brief in opposition to Keeling's objections on December 11, 2000. The objections became ripe for disposition on December 21, 2000, when Keeling filed a reply brief.

When objections are filed to a report of a magistrate judge, we make a de novo determination of those portions of the report or specified proposed findings or recommendations made by the magistrate judge to which there are objections. *United States vs. Raddatz*, 447 U.S. 667 (1980); 28 U.S.C. §636(b)(1); Local Rule 72.31. District judges have wide discretion as to how they treat recommendations of the magistrate judge. *Id.* Indeed, in providing for a de novo review determination rather than a de novo hearing, Congress intended to permit whatever reliance a district judge, in the exercise of sound discretion, chooses to place on a magistrate judge's proposed findings and

recommendations. Id. See also Mathews vs. Weber, 423 U.S. 261, 275 (1976); Goney vs. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

Magistrate Judge Blewitt recommended that Keeling's motion for default judgment be denied because defendants timely filed in response to Keeling's complaint a motion to dismiss. Keeling did not object to that recommendation and we will adopt it.

Keeling's complaint involves a challenge to the conditions of his confinement. Specifically, he is challenging the denial of single cell status. Prior to initiation of such an action, Keeling is required to exhaust his administrative remedies. 42 U.S.C. § 1997e(a). The Pennsylvania Department of Corrections' Consolidated Inmate Grievance Review System, DC-ADM 304, requires an inmate after an attempt at informal resolution of the problem, to file a written grievance and submit that grievance to the Grievance Coordinator. An appeal from an adverse decision of the Grievance Coordinator is required to be taken in writing to the Superintendent of the institution where the inmate is incarcerated. The inmate is then required to take a final appeal from an adverse decision by the Superintendent to the Central Review Committee of the Pennsylvania Department of Corrections.

Magistrate Judge Blewitt recommended that Keeling's complaint be dismissed as it relates to defendants Keller, Dean, Stachelek, Demming, Larkins, Jones, Burnett, Kneiss, Varner, Bitner and Horn because Keeling failed to exhaust his

administrative remedies. Keeling has not presented any valid reason why we should reject that recommendation.

Attached to Keelings complaint is grievance #DL-0860-99. In that grievance Keeling challenges the actions of defendant Putman in denying him single cell status. Keeling claims that he is entitled to single cell status because he has recently been sentenced to some extremely long periods of imprisonment and he has voluminous legal paperwork. During the administrative remedies process Keeling only claimed entitlement to a single cell on the basis of the new sentences¹ and the voluminous legal materials. Putman concedes that Keeling has exhausted his administrative remedies with respect to the claims against her.

Magistrate Judge Blewitt recommended that the complaint as it relates to Putman be dismissed because Keeling does not set forth a viable due process or equal protection claim. We agree with Magistrate Judge Blewitt. Keeling alleges that his due process rights were violated because he was not interviewed and there was no investigation conducted. He contends that the denial of single cell status is a denial of his due process rights.

While it is recognized that states may create liberty

¹ In his complaint Keeling states, including grammatical errors, as follows:

This inmate is serving (4) excessive terms in two States, 32. 1/2. to 65 years, 25, to Life, 28. 1/2. to 57 years, 60 to 120years.

interests which are protected by the due process clause of the Fourteenth Amendment, those interests are "limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin vs. Conner*, 515 U.S. 472, 484 (1995). The nature of the deprivation the inmate has experienced is to be examined. Because double-celling inmates is the norm in prisons, Keeling was not deprived of his right to due process under the Fourteenth Amendment. The denial of a single cell cannot be considered an imposition of an atypical or significant hardship. An inmate has no entitlement under state or federal law to single cell status. Consequently, there can be no procedural due process violation.

We will now address Keeling's equal protection claim. The Fourteenth Amendment of the Constitution provides in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Court of Appeals for the Third Circuit has observed that the equal protection clause "is not a command that all persons be treated alike but, rather, 'a direction that all persons similarly situated should be treated alike.'" *Artway vs. Attorney General*, 81 F.3d 1235, 1267 (3d Cir. 1996) (quoting *City of Cleburne vs. Cleburne Living Center*, 473 U.S. 432, 439 (1985)); see also *Kuhar vs. Greensburg-Salem Sch. Dist.*, 616 F.2d 676, 677 n.1 (3d Cir. 1980) ("An equal protection claim arises

when an individual contends that he or she is receiving different treatment from that received by other individuals similarly situated.").

It is well-settled that a litigant in order to establish a viable equal protection violation must show an intentional or purposeful discrimination. *Snowden vs. Hughes*, 321 U.S. 1, 8 (1944); *Wilson vs. Schillinger*, 761 F.2d 921, 929 (3d Cir. 1985), cert denied, 475 U.S. 1096 (1986); *E & T Realty vs. Strickland*, 830 F.2d 1107, 1113-14 (11th Cir. 1987), cert. denied, 485 U.S. 961 (1988). This "state of mind" requirement applies equally to claims involving (1) discrimination on the basis of race, religion, gender, alienage or national origin, (2) the violation of fundamental rights and (3) classifications based on social or economic factors. See, e.g., *Britton vs. City of Erie*, 933 F. Supp. 1261, 1266 (W.D. Pa. 1995), aff'd, 100 F.3d 946 (3d Cir. 1996); *Adams vs. McAllister*, 798 F. Supp. 242, 245 (M.D. Pa.), aff'd, 972 F.2d 1330 (3d Cir. 1992).²

Keeling has failed to allege facts from which it can be concluded that Putman engaged in intentional or purposeful discrimination or that he was treated differently from similarly situated individuals on the basis of his race or some other impermissible reason. Keeling has failed to set forth any allegations in his complaint which would lead the court to conclude that the denial of single cell status was the result of

²However, when a statute, rule or regulation "discriminates on its face," there is no need to present any further evidence of intent. See *E & T Realty*, 830 F.2d at 1112 n.5.

purposeful discrimination based on his race. Furthermore, Keeling has only exhausted his administrative remedies with respect to his claim of entitlement to a single cell because of new sentences and his voluminous legal materials. Keeling did not raise by way of the Consolidated Inmate Grievance Review System a claim that he was discriminated because of his race, religion, national origin or some other impermissible factor. Consequently, his equal protection claim will be dismissed.

Although in his objections to the report of Magistrate Judge Blewitt Keeling for the first time appears to contend that his equal protection claim regarding single cell status is based on race, his complaint does not set forth such a claim.

We find no error in Magistrate Judge Blewitt's report and we shall adopt it as our own and deny Keeling's motion for default judgment and grant defendants' motion to dismiss the complaint.

NOW, THEREFORE, IT IS ORDERED THAT:

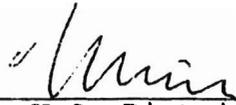
1. The report of Magistrate Judge Thomas M. Blewitt filed on September 27, 2000, is adopted in toto.
2. Keeling's motion for default judgment (Doc. 20) is denied.
3. Defendant's motion to dismiss Keeling's complaint (Doc. 18) is granted.
4. Keeling's complaint as it relates to the claims against Keller, Dean, Stachelek, Demming, Larkins, Jones, Burnett, Kneiss, Varner, Bitner and Horn is dismissed without

prejudice for failure to exhaust administrative remedies.

5. Keeling's complaint as it relates to defendant Putman is dismissed with prejudice.

6. The Clerk of Court shall close this case.

7. The Clerk of Court shall send a copy of this order to Magistrate Judge Blewitt.



MUIR, U.S. District Judge

MM:gs