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

FILED
JUL 17 1991
MICHAEL E. KUNZ, Clerk
By_____Dep. Clerk

THOMAS S. VILE, et. al. : CIVIL ACTION
:
v. :
:
WARDEN KENNETH MATTY, et. al. : No. 90-6864

MEMORANDUM AND ORDER

BECHTLE, CH. J.

JULY 17th, 1991

Presently before the court is defendants' motion for summary judgment. For the reasons set forth below, defendants' motion will be granted.

BACKGROUND

Plaintiffs Thomas Vile, Herman Jamerson, Mark Alexander, and Kevin Small, inmates in Delaware County Prison in Thornton, Pennsylvania ("Prison"), acting pro se, brought this 42 U.S.C. § 1983 action against the Prison warden and other Prison officials, alleging that they were denied equal protection of the law, subjected to double jeopardy, and suffered cruel and unusual punishment as a result of conditions imposed pursuant to their placement in high security levels. Specifically, plaintiffs claim that they were deprived of haircuts, watching prison videos, exercise, use of law books, and freedom of religion.

All plaintiffs were placed in the Delaware County Prison Behavioral Modification Unit ("BMU"). Prisoners are placed in the BMU as a result of infractions of Prison rules and regulations. After being removed from the BMU, plaintiff Vile was placed in "D block," a maximum security block at Level III security. Vile required Level III security because he was

convicted of murder in the first degree. Plaintiffs Small, Jamerson, and Alexander were also placed in the BMU and subsequently were placed on Level II security in "D Block." Prisoners are placed on Level II security only after they have been found to be in violation of Prison rules and regulations via the regular disciplinary process at least three times.

SUMMARY JUDGMENT STANDARD

The function of a motion for summary judgment is to avoid a trial in cases where it is unnecessary and would only cause delay and expense. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976), cert. denied, 429 U.S. 1038 (1977). In evaluating a motion for summary judgment, the court may examine the pleadings and other material offered by the parties to determine if there is a genuine issue of material fact to be tried. Fed.R.Civ.P. 56(c). Sims v. Mack Truck Corp., 488 F. Supp. 592, 597 (E.D. Pa. 1980). The United States Supreme Court has directed that summary judgment "shall be rendered forthwith" if it appears from an application of substantive law to the uncontroverted facts that the movant is entitled to judgment as a matter of law. Id. See also Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986).

In considering a motion for summary judgment, the court must determine whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue of material fact, and thus whether the moving party is entitled to judgment as a matter

of law. Fed.R.Civ.P. 56(c). Chipollini v. Spencer Gifts, Inc., 814 F.2d 893, 896 (3d Cir. 1987) (en banc); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). "As to materiality, the substantive law will identify which facts are material." Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). An issue is "genuine" only if the evidence is such that a reasonable jury could find for the non-moving party. Id.

After reviewing the parties' submissions, the court concludes that defendants have established that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law.

DISCUSSION

The Supreme Court has repeatedly stated that prison officials have broad administrative and discretionary authority over the institutions they manage. Hewitt v. Helms, 459 U.S. 460 (1983); Hutto v. Finney, 437 U.S. 678, rehearing denied, 439 U.S. 122 (1976). This broad discretionary authority is necessary because the administration of a prison is "at best an extraordinarily difficult undertaking." Wolff v. McDonnell, 418 U.S. 539 (1974). Courts, therefore, accord great deference to decisions made by prison officials concerning the security needs of their institutions.

Plaintiffs claim that after being placed in the BMU for violating Prison regulations, they were confined, without a hearing, to "22 hour lockup" for the same offenses. This "double" punishment, plaintiffs argue, deprived them of their due

process rights, subjected them to double jeopardy, and subjected them to cruel and unusual punishment.

The decision made by Prison officials to place the plaintiffs on 22 hour lockup was clearly made to maintain security within the Prison. The nature of the plaintiffs' crimes coupled with their repeated violations of Prison regulations posed a serious threat to other prisoners and Prison employees.

In addition, each plaintiff was notified of his security level and given a hearing before a disciplinary hearing board before any action was taken against him. Plaintiffs also had the opportunity to appeal any charges filed against them. In light of these facts, the court finds that the plaintiffs' due process rights were not violated and that plaintiffs were not subjected to double jeopardy.

Plaintiffs also claim that they were subject to cruel and unusual punishment by being placed on 22 hour lockup after coming out of BMU. The court does not find any evidence of cruel and unusual punishment in the present case. It is standard Prison policy to place prisoners on 22 hour lockup after they have violated Prison rules more than three times. Plaintiffs all admitted in their depositions to committing serious infractions of Prison regulations. Plaintiffs had proven themselves to be dangerous, and their placement in high security lock-up was deemed necessary by Prison officials.

The eighth amendment prohibits any punishment which violates civilized standards of humanity and decency, and "which is

repugnant to the conscience of mankind." Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 471 (1947). See also Estelle v. Gamble, 429 U.S. 97, 102-103 (1976). Plaintiffs failed to plead one single condition imposed pursuant to 22 hour lockup that comes close to being "repugnant to the conscience of mankind."

In addition, plaintiffs argue that their civil rights were violated because, while on 22 hour lockup, they were not permitted to receive haircuts with the other "D Block" inmates. Haircut priveleges, however, fall within the administrative discretion of prison officials. Furthermore, plaintiffs were not denied haircuts. Defendants' merely placed restrictions on when plaintiffs were allowed to receive haircuts because they were in high security lockup. Such restrictions did not amount to constitutional violations.

Plaintiffs also claim that their civil rights were violated because they were not permitted to watch prison videos. Although the absence of television may have been of great concern to the plaintiffs, this claim does not merit consideration since it is a matter entirely within the discretion of Prison officials.

Plaintiffs next contend that their civil rights were violated because they were deprived of an "adequate or responsible exercise period." Both Level II and III Security mandate a daily two-hour exercise period. It has been held that two hours per day of exercise comports with constitutional standards. Lock v. Jenkins, 464 F. Supp. 541 (N.D. Ind. 1978).

Considering these factors, the court finds no constitutional violation in plaintiffs' restrictions to a daily two-hour exercise period.

Plaintiffs' complaint also states that they were denied access to law books in violation of their constitutional rights. Plaintiffs' testimony, however, reveals that they were able to obtain law books and had access to the law library. This claim, therefore, is without merit.

Finally, plaintiffs allege that they were deprived of their freedom of religion because, while on 22 hour lockup, they were not permitted to attend religious services with the general inmate population. Because it serves a legitimate penological purpose, a prison official's decision to prohibit a high security prisoner's attendance at religious services does not violate the first amendment. Mattilyn v. Henderson, 841 F.2d 31 (2d Cir. 1981). Plaintiffs were permitted to see the chaplain on his weekly visits to "D Block," and were allowed, upon request, to visit privately with the chaplain. Considering these facts, the court finds plaintiffs' religion claim to be without merit.

CONCLUSION

The court is cognizant of the liberal reading to be given to motions filed by pro se litigants. However, having found that the plaintiffs in the present case suffered no violations of their constitutional rights, the court will grant defendants' motion for summary judgment.

An appropriate Order will be entered.

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

THOMAS S. VILE, et. al.	:	CIVIL ACTION
	:	
v.	:	
	:	
WARDEN KENNETH MATTY, et. al.	:	No. 90-6864

ORDER

AND NOW, TO WIT, this 17th day of July, 1991, upon consideration of defendants' motion for summary judgment, IT IS ORDERED that said motion is granted.

LOUIS C. BECHTLE, Ch. J.