

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH FRANCIS REEDER, JR.,)
)
 Plaintiff,)
)
 v.) Civil Action No. 99-328-SLR
)
DEPARTMENT OF CORRECTION;)
SGT. R. REYNOLDS; C/O E. L.)
HOWELL; and LT. D. E. WEST,)
)
 Defendants.)

MEMORANDUM ORDER

I. INTRODUCTION

Plaintiff Kenneth Francis Reeder, Jr. was at all relevant times an inmate at Sussex Correctional Institution ("SCI") in Georgetown, Delaware. (D.I. 65) Plaintiff filed this action pursuant to 42 U.S.C. § 1983 against defendants Delaware Department of Correction ("DOC"), Sgt. Rodney Reynolds ("Reynolds"), Correctional Officer Emory L. Howell ("Howell"), and Lt. D. E. West ("West").¹ (Id.) Plaintiff claims that defendants violated his Eighth and Fourteenth Amendment rights against cruel and unusual punishment, and are liable for assault and battery stemming from an unwarranted beating that occurred on March 16, 1999. (Id.) Plaintiff seeks compensatory and punitive damages. (Id.)

¹The court dismissed defendants DOC and West from this action in a January 5, 2000 order. (D.I. 49)

Currently before the court are defendants' motion for summary judgment for failure to exhaust administrative remedies and motion to stay proceedings. (D.I. 60, 61) For the reasons stated below, defendants' motion for summary judgment is denied, and defendants' motion to stay proceedings is dismissed as moot.

II. BACKGROUND

This suit stems from an alleged beating of plaintiff by correctional officers on the morning of March 16, 1999. Plaintiff claims that after he asked defendant Howell for a roll of toilet paper, Howell ordered plaintiff to go to his cell without answering his request. (D.I. 65) When plaintiff failed to respond immediately, Howell allegedly threatened to "spray" him.² (Id.) Shortly after plaintiff returned to his cell, Howell entered with Reynolds and three other DOC employees. Reynolds allegedly ordered plaintiff to pack his belongings in preparation for a transfer to another housing unit. When plaintiff stood to pack, Reynolds slapped his face. (Id.) Plaintiff approached Reynolds, who allegedly pushed plaintiff onto his bed. (Id.) Plaintiff claims that Reynolds then knocked

²Defendants claim that plaintiff already had a roll of toilet paper in his hand when plaintiff asked Howell for another one. (D.I. 25, Exs. A1, B) When Howell told him he could not have another roll, plaintiff blew his nose on the paper and threw it in the trash. (Id.) Howell then asked for plaintiff's identification badge, and plaintiff told him that it was in his cell. Howell ordered plaintiff to go to his cell to get his identification badge, and told plaintiff that he would meet him there. (Id.)

him to the ground and pinned him there as Reynolds and Howell punched and kicked him for about five minutes.³ (Id.)

Defendants claim that plaintiff was examined by Nurse Jester later that day and, according to her report, she treated three quarter-inch, "superficial scratches" on plaintiff's neck with hydrogen peroxide and an antibiotic ointment. (D.I. 25, Ex. F, F1) In addition to the cuts, Nurse Jester noted "reddened and darker discoloration" of plaintiff's neck. Plaintiff told Nurse Jester that he had no other injuries. (D.I. 25, Ex. F) Plaintiff, however, contends that he was never examined by Nurse Jester, but by Dr. Burns two days after the incident. (D.I. 28 and 46) According to plaintiff, Dr. Burns measured his cuts and swollen wrists and recorded the bruises on his back and legs in his medical file. Plaintiff also claims that since the time of the alleged beating, he has suffered from frequent nightmares and migraine headaches, for which he takes prescription medication twice daily. (Id.)

³Defendants claim that once Howell entered plaintiff's cell and again asked for his identification badge, plaintiff responded, "It's you and me m_____ f_____, one on one, I'll kick your ass." (D.I. 25, Ex. A1) Howell locked plaintiff's cell and requested backup, at which time the watch commander authorized plaintiff's transfer to housing unit #4. (D.I. 25, Ex. A2, C, D) When backup arrived and the officers attempted to handcuff plaintiff, he allegedly became combative and attempted to break away. The officers "subdued" him and transferred him to the other housing unit. Defendants claim that while escorting plaintiff, the officers asked him if he was hurt anywhere, and plaintiff responded, "No, I'm ok." (D.I. 25, Ex. G, H)

Following the incident, Howell filed a Disciplinary Report against plaintiff for disorderly and threatening behavior, a violation of Institutional Rule 1.06. (D.I. 60, Ex. A) After a hearing on April 14, 1999 at which plaintiff was present, plaintiff was found guilty of violating Rule 1.06 by the hearing officer. (D.I. 160, Ex. C1, C4) Plaintiff was advised of his right to appeal the decision but chose not to do so. (D.I. 60, Ex. C1, C3, C5, C6)

Plaintiff also filed a Grievance Form on the day of the incident. (D.I. 66, Ex. A) Upon filing of a Grievance Form, Bureau of Prisons Procedure 4.4 requires an investigation, and if necessary, a hearing, into the allegations. (D.I. 66, Ex. 2) Plaintiff claims that his Grievance Form was never acted upon by the DOC. (D.I. 66)

III. STANDARD OF REVIEW

Summary judgment should be granted only if the court concludes 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 is in dispute. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). Once the moving party has carried its initial burden, the nonmoving party "must come forward with 'specific facts showing that there is a genuine issue for

trial.'" Id. at 587 (quoting Fed. R. Civ. P. 56(e)). "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. Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (citations omitted). 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). The mere existence of some evidence in support of the nonmoving party 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 factual issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The court must "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)(citation omitted).

IV. DISCUSSION

Defendants argue that plaintiff did not exhaust his administrative remedies prior to filing this action pursuant to

the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a).⁴ Before filing a civil action on an excessive force claim, a plaintiff-inmate must exhaust his administrative remedies, even if the ultimate relief sought is not available through the administrative process. See Booth v. Churner, 206 F.3d 289, 300 (3d Cir. 2000), cert. granted, 68 U.S.L.W. 3774, 69 U.S.L.W. 3289, 69 U.S.L.W. 3294 (U.S. Oct. 30, 2000) (No. 99-1964). See also Ahmed v. Sromovski, 103 F. Supp.2d 838, 843 (E.D. Pa. 2000) (quoting Nyhuis v. Reno, 204 F.3d 65, 73 (3d Cir. 2000) (stating that Section 1997e(a) "specifically mandates that inmate-plaintiffs exhaust their available administrative remedies.").

In this case, plaintiff chose not to appeal the disciplinary proceedings brought against him. However, disciplinary proceedings do not provide administrative remedies to an inmate. Plaintiff pursued his administrative remedies by filing a Grievance Form according to prison procedure, and defendants do not dispute plaintiff's claim that his Grievance Form was never

⁴The PLRA provides, in pertinent part:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a).

acted upon by the DOC. Therefore, the court determines that plaintiff has exhausted his administrative remedies and defendants' motion for summary judgment is denied.

V. CONCLUSION

Therefore, at Wilmington, this 22nd day of February, 2001;

IT IS ORDERED that:

1. Defendants' motion for summary judgment (D.I. 60) is denied.

2. Defendants' motion to stay proceedings (D.I. 61) is dismissed as moot.

3. All motions to join other parties and amend the pleadings shall be filed on or before **April 23, 2001**.

4. All discovery shall be completed on or before **May 23, 2001**.

United States District Judge