

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH DEPUTY,)
)
 Plaintiff,)
)
 v.) Civil Action No. 02-183-SLR
)
 STANLEY TAYLOR, THOMAS)
 CARROLL, LARRY MCGUIGAN, and)
 ELIZABETH BURRIS,)
)
 Defendants.)

Kenneth Deputy, Delaware Correctional Center, Smyrna, Delaware.
Plaintiff, pro se.

Stuart B. Drowos, Esquire, Delaware Department of Justice,
Wilmington, Delaware. Counsel for Defendants.

MEMORANDUM OPINION

Dated: February 19, 2003
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Kenneth Deputy is an inmate at Delaware Correctional Center ("DCC") in Smyrna, Delaware. (D.I. 20) On March 13, 2002, plaintiff filed this action pursuant to 42 U.S.C. § 1983 against defendants alleging violations of his Eighth and Fourteenth Amendment rights under the United States Constitution. (D.I. 2) Presently before the court are defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim, defendants' motion for a protective order, and plaintiff's motion to compel discovery. (D.I. 19, 22, 23) Because the parties presented matters outside the pleadings, the court will review the motion to dismiss as a motion for summary judgment. For the reasons that follow, the court shall grant defendants' motion to dismiss. The court shall dismiss as moot defendants' motion for a protective order and plaintiff's motion to compel discovery.

II. BACKGROUND

On September 18, 1997, plaintiff was convicted by a Delaware Superior Court jury of attempted robbery in the first degree, first degree assault and possession of a deadly weapon during the commission of a felony. On December 19, 1997, he was sentenced to 27 years imprisonment to be suspended after 22 years for probation. Plaintiff appealed pro se, and the Delaware Supreme

Court affirmed the conviction and sentence. See Deputy v. State, 718 A.2d 527 (Del. Aug. 10, 1998).

On September 14, 1998, plaintiff filed a motion for post-conviction relief in Delaware Superior Court. Plaintiff's motion was referred to a Court Commissioner for proposed findings and recommendations pursuant to 10 Del. C. § 512(b) and Superior Court Criminal Rule 62. In a Report and Recommendation dated August 10, 1999, the Court Commissioner concluded that petitioner's claims were either procedurally barred or lacked merit. By order dated September 17, 1999, the Delaware Superior Court adopted the Court Commissioner's Report and Recommendation and denied plaintiff's motion for post-conviction relief. See State v. Deputy, Nos. IK97-01-0018-R1 through 0020-R1, 1999 WL 743921 (Del. Super. Sept. 17, 1999). The Delaware Supreme Court affirmed the Superior Court's decision. See Deputy v. State, 748 A.2d 913 (Del. Mar. 9, 2000).

On or about October 11, 2001, plaintiff was transferred to the Supermax area of DCC. (D.I. 2) Plaintiff asserts that throughout the winter months of December 2001, January 2002 and February 2002, he was housed in a cell without heat and with the air conditioning on. (Id.) During this period, he filed a number of grievances with prison officials related to the temperature in his cell. (D.I. 20, Ex. B) Plaintiff contends that the prison personnel refused to address these grievances

and, due to the cold conditions in his cell, he has suffered constant colds, sore throats, skin rashes, and other permanent physical injuries. (D.I. 2) Plaintiff submits a copy of a letter sent from his mother to defendant Burris, as well as two affidavits from fellow inmates attesting to the conditions of confinement. (D.I. 2, Ex. 1, D.I. 21, Ex. D-1, D-2)

In support of their motion to dismiss, defendants submit copies of plaintiff's grievance forms, sick call complaints, and medical records, a DCC Inmate Grievance Office memo responding to plaintiff's grievances, an affidavit of DCC's Capital Program Administrator addressing the regulation of prison temperature, and the name of the official approving said temperature. (D.I. 20, Ex. A, B, C)

III. STANDARD OF REVIEW

The parties have referred to matters outside the pleadings, therefore, 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 (3rd 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 (3rd 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

A. Plaintiff's Conditions-of-Confinement Claim

Plaintiff fails to satisfy the Supreme Court's two prong test for violations of the Eighth Amendment under Wilson v. Seiter, 501 U.S. 294, 298 (1991). First, an inmate must show under an objective standard that the alleged deprivation was sufficiently serious. Id. Second, the inmate must show that the prison officials subjectively acted with a sufficiently culpable state of mind. Id. Plaintiff does not prove either of these two prongs and, therefore, fails to state a claim. (D.I. 20 at ¶ 8, 10)

The fact that plaintiff experienced somewhat cold conditions in his cell over a three month period does not rise to the level of a constitutional violation.¹ "The Constitution does not mandate comfortable prisons." Blackiston v. Vaughn, No. 95-3740, 2002 U.S. Dist. LEXIS 16261, at *8 (E.D. Pa. Aug. 19, 2002) (quoting Rhodes v. Chapman, 452 U.S. 337, 349 (1981)); see

¹Defendants contend that plaintiff only "lists general complaints regarding the overall conditions at the DCC, but he fails to identify a time or date when he was deprived of a 'single identifiable human need.'" (Id.) The next paragraph in defendants' brief, however, states that "[p]laintiff alleges that throughout the winter months of December, 2001, January and February, 2002, he was forced to live in a cell that lacked heat but had the air-conditioning on throughout this period." (Id. at ¶ 6) In this sentence, plaintiff identifies both the time period of the alleged conduct and the human need of which he was deprived.

also Tinsley v. Vaughan, No. 90-113, 1991 U.S. Dist. LEXIS 7364 at *9, 1991 WL 95323, at *4 (E.D. Pa. May 29, 1991) ("To the extent [a prisoner] merely alleges discomfort, he does not meet the requirements for a claim of **cruel and unusual punishment.**")

Only in the most extreme cases does the lack of heat rise to the level of a constitutional violation. Blackiston, 2002 LEXIS 16261 at *9. See Dixon v. Godinez, 114 F.3d 640 (7th Cir. 1997) (summary judgment improper when inmate alleged ice formed on cell walls during winter for several years as a result of inadequate heating); Chandler v. Baird, 926 F.2d 1057, 1064-66 (11th Cir. 1991) (collecting cases). Here, plaintiff can only show that he has suffered discomfort. He claims he sought medical treatment for temperature-related conditions, however, the majority of his medical sick call slips and grievances relate to "chest pains, upper left arm and shoulder pain and skin rashes." (D.I. 20, Ex. D) See Lambert v. Horn, No. 96-2875, 1996 U.S. Dist. LEXIS 14968, at *10 (E.D. Pa. Oct 11, 1996) (absence of any ailment other than colds or sore throats militates against characterizing cell conditions as objectively serious). For these reasons, plaintiff cannot meet the first prong of the Wilson test.

Plaintiff also fails to establish the second prong of Wilson, as he does not allege any acts to suggest that defendants acted with "sufficiently culpable state of mind". He merely

asserts that defendants failed to respond to his repeated complaints, which is inadequate to establish defendants' culpability. See Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3rd Cir. 1976); (D.I. 2 at ¶ 3). Moreover, DCC did respond to plaintiff's grievances. A memo dated February 12, 2002 from DCC Inmate Grievance Office to plaintiff states: "[The] Governor decides building temps and it is 68 degrees." (D.I. 20, Ex. B). Defendants also submit an affidavit of Gerald D. Platt, DCC Capital Program Administrator, which states: "The daily temperature print out sheets during the above mentioned months reflect readings between 73 and 74 degrees." (D.I. 20, Ex. A).

Plaintiff has failed to meet the requirements for a claim of Eighth Amendment violations. Accordingly, this court will grant defendants' motion for summary judgment.

B Defendants' Sovereign Immunity Defense

Defendants contend that they cannot be held liable in their official capacities under the Eleventh Amendment. (D.I. 20 at ¶ 13) "[I]n the absence of consent, a suit [in federal court] in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). This preclusion from suit includes state officials when "the state is the real, substantial party in interest." Id. at

101 (quoting Ford Motor Co. v. Dep't of Treasury, 323 U.S. 459, 464 (1945)). "Relief sought nominally against an [official] is in fact against the sovereign if the decree would operate against the latter." Id. (quoting Hawaii v. Gordon, 373 U.S. 57, 58 (1963)). A State, however, may waive its immunity under the Eleventh Amendment. Such waiver must be in the form of an "unequivocal indication that the State intends to consent to federal jurisdiction that otherwise would be barred by the Eleventh Amendment." Ospina v. Dep't of Corrections, 749 F. Supp. 572, 578 (D. Del. 1990) (quoting Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 n.1 (1985)). Because the State of Delaware has not consented to plaintiff's suit or waived its immunity, the Eleventh Amendment protects defendants from liability in their official capacities.

V. CONCLUSION

For the reasons stated, the court shall grant defendants' motion to dismiss. The court shall dismiss as moot defendants' motion for a protective order and plaintiff's motion to compel discovery. An appropriate order shall issue.

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ELIZABETH BURRIS,)
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Defendants.)

O R D E R

At Wilmington this 19th day of February, 2003,
consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendants' motion for summary judgment (D.I. 19) is granted.
2. Defendants' motion for protective order (D.I. 23) is dismissed as moot.
3. Plaintiff's motion to compel discovery (D.I. 22) is dismissed as moot.
4. The Clerk is directed to enter judgment in favor of defendants and against plaintiff.

Sue L. Robinson
United States District Judge