

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KEVIN HOWARD, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civ. No. 01-376-SLR  
 )  
 ROBERT SNYDER, STAN TAYLOR, )  
 FRANCINE KOBUS, JOHN DOE #1, JOHN )  
 DOE #2, ANGELA LATSKO, WAYNE )  
 MASSEY, DOREEN WILLIAMS, LESMA )  
 JONES, ELIZABETH BURRIS, CHARLES )  
 CUNNINGHAM, JOHN AND JANE DOE, )  
 and PAUL HOWARD, )  
 )  
 Defendants. )

---

Kevin Howard, Delaware Correctional Center, Smyrna, Delaware.  
Pro se Plaintiff.

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

---

**MEMORANDUM OPINION**

Dated: June 15, 2004  
Wilmington, Delaware

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

On June 6, 2001, Kevin Howard, a pro se plaintiff proceeding in forma pauperis ("plaintiff"), filed the present action pursuant to 42 U.S.C. § 1983, alleging First and Fourteenth Amendment violations by Robert Snyder, Stan Taylor, Francine Kobus, John Does #1 and #2, Angela Latsko, Wayne Massey, Doreen Williams, Lesma Jones, Elizabeth Burris, Charles Cunningham, John and Jane Doe, and Paul Howard (collectively, "defendants").<sup>1</sup>

(D.I. 2) Plaintiff is, and has been at all times relevant to this claim, incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. (D.I. 69 at 2) Plaintiff claims that prison officials improperly confiscated and destroyed his legal materials, "thereby denying [him] access to the courts, and [] hindering, interfering, obstructing and impeding [his] access to the courts." (Id. at 1) Plaintiff requests compensatory damages, declaratory and prospective injunctive relief, and "any other relief that the [c]ourt deems appropriate." (Id. at 19) The court has jurisdiction over the present suit pursuant to 28 U.S.C. § 1331. Presently before the court are defendants'

---

<sup>1</sup>At the time of plaintiff's complaint, Stanley Taylor, Paul Howard, Robert Snyder, Elizabeth Burris, Charles Cunningham, Francine Kobus, Doreen Williams, Lesma Jones, Wayne Massey, Angela Latsko, John Does # 1 and #2, and John and Jane Doe were all "[c]orrectional officers or officials" employed at either the Delaware Correctional Center or the Delaware Department of Correction. (D.I. 69 at 2)

renewed motion to dismiss<sup>2</sup> and motion for a protective order, as well as plaintiff's motion for appointment of counsel, motion to strike defendants' affidavits, motion for leave to file an amended complaint, and various motions to compel discovery.

(D.I. 121, 145, 112, 126, 127, 134, 135, 136, 137, 143) For the reasons that follow, the court grants defendants' motion to dismiss, denies defendants' motion for a protective order, and denies each of plaintiff's motions.

## **II. BACKGROUND**

During a "shakedown" on April 28, 1999, correctional officers searched plaintiff's cell. (D.I. 69 at ¶ 21) Upon discovering that plaintiff was in possession of more than the two boxes allowed under DCC rules without written permission, prison officials confiscated a third box and its contents as contraband. (D.I. 121 at ¶ 5) At a disciplinary hearing held July 28, 1999, plaintiff pleaded guilty to possession of non-dangerous contraband and was penalized by the loss of all privileges for five days. (Id., Ex. A-14) Plaintiff did not appeal this decision. (Id.)

On August 26, 1999, plaintiff filed a grievance stating that, although some of the materials confiscated in the shakedown

---

<sup>2</sup>Defendants are renewing their original motion for dismissal, filed on August 26, 2002. (D.I. 47) Plaintiff has not yet filed an answer brief to either motion. (D.I. 133)

on April 28, 1999 had been returned to him, other materials, including trial transcripts, were missing. (Id., Ex. A-15) Plaintiff requested that the missing materials be replaced or, if they had been destroyed, that he be given "an avenue to regain the equivalent information." (Id.) On July 26, 2000, defendant Elizabeth Burris, the deputy warden of DCC, denied plaintiff's grievance. (Id., Ex. A-17) According to defendant Burris, "[i]tems allegedly lost were taken as excessive and confiscated as contraband. This was a disciplinary matter and is not grievable." (Id.) On August 1, 2000, plaintiff appealed defendant Burris's decision to the Bureau Grievance Officer ("BGO"). On August 17, 2000, the BGO denied the appeal, concluding that "there is no further issue to mediate nor [o]utside [r]eview necessary." (Id., Ex. A-18)

### **III. STANDARD OF REVIEW**

Because the defendants have referred to matters outside the pleadings, defendant's motion to dismiss shall be treated as a motion for summary judgment and disposed of as provided in Rule 56 of the Federal Rules of Civil Procedure. 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. 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 (3d 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." Pennsylvania Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d 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. 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 his case with respect to which he has the burden of proof, the moving

party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In other words, the court must grant summary judgment if the party responding to the motion fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. Omnipoint Comm. Enters., L.P. v. Newtown Township, 219 F.3d 240, 242 (3d Cir. 2000) (quoting Celotex, 477 U.S. at 323).

#### **IV. DISCUSSION**

##### **A. Motion to Dismiss**

Plaintiff alleges that prison officials improperly confiscated a box of legal materials from his cell and subsequently destroyed some of them, thereby hindering his ability to litigate an appeal pending before the Supreme Court of Delaware, as well as several other legal claims he planned to pursue. (D.I. 69 at 1) As a result, plaintiff claims that he has been denied his right of access to the courts in violation of the First and Fourteenth Amendments. (Id.)

Defendants have moved to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted, (D.I. 121 at ¶ 11), arguing that the seizure of plaintiff's excess belongings was proper under the prison regulation that requires a prisoner to have written permission to maintain more than two boxes in his cell at one time (the "two boxes per inmate" regulation). Defendants also assert that there is no evidence

that the box of materials seized from plaintiff contained legal documents. (Id. at ¶ 5) In addition, defendants contend that, despite the seizure, plaintiff still had enough time to acquire the proper documents and to litigate his claim before the Delaware Supreme Court. (Id. at ¶ 4)

The Supreme Court has noted that "prison walls do not form a barrier separating prison inmates from the protections of the Constitution." Turner v. Safley, 482 U.S. 78, 84 (1987). See also Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974) ("There is no iron curtain drawn between the Constitution and the prisons of this country"). Consequently, the Supreme Court has recognized that persons convicted of serious crimes and confined to penal institutions retain numerous rights, including the right of meaningful access to the courts. Bounds v. Smith, 430 U.S. 817 (1977). Nevertheless, the Supreme Court has also recognized that the rights of prisoners "must be exercised with due regard for the 'inordinately difficult undertaking' that is modern prison administration." Thornburgh v. Abbott, 490 U.S. 401, 407 (1989) (quoting Turner, 482 U.S. at 85). Prison officials must weigh the need for internal order and security against the rights of prisoners. Thus, courts have been called upon to review the balance struck by prison officials between the penal institution's need to maintain security within its walls and the rights of prisoners.

According to the court in Turner v. Safley, in cases involving plaintiffs who claim that their civil rights were violated by prison regulations, the proper standard of review is "whether a prison regulation that burdens fundamental rights is 'reasonably related' to legitimate penological objectives, or whether it represents an 'exaggerated response' to those concerns." Turner, 482 U.S. at 87. The Turner court then stated that "several factors are relevant in determining the reasonableness of the regulation at issue." Id. at 89. First, courts may consider whether a "'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it" exists. Id. at 88 (quoting Block v. Rutherford, 468 U.S. 576, 586 (1984)). Regulations cannot be upheld, however, "where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational. Moreover, the governmental objective must be a legitimate and neutral one." Id. at 89-90. Second, courts may evaluate "whether there are alternative means of exercising the right that remain open to prison inmates." Id. at 90. "Where 'other avenues' remain available for the exercise of the asserted right, courts should be particularly conscious of the 'measure of judicial deference owed to corrections officials . . . in gauging the validity of the regulation.'" Id. (quoting Pell v. Procunier, 417 U.S. 817, 827 (1974)) (citation omitted).

Third, courts may look at

the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally . . . . When accommodation of an asserted right will have a significant "ripple effect" on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials.

Id. (citation omitted). In other words, courts must weigh the potential side effects the prison may suffer if the prisoner's claim that his rights are being violated is upheld. Lastly, "the absence of ready alternatives [to a regulation] is evidence of [its] reasonableness." Id. (citing Block, 468 U.S. at 587).

Applying this framework to the issue at bar, the court concludes that the regulation requiring prisoners to get written permission to possess a third storage box "is 'reasonably related' to legitimate penological objectives." Id. at 87. Focusing on the first factor identified in Turner, the court finds no genuine issue of material fact concerning the connection between the regulation and the government interest advanced by the "two boxes per inmate" regulation. Prison officials at DCC have identified several legitimate objectives served by the "two boxes per inmate" regulation. These include maintaining clutter-free cells, ensuring adequate living space within the cell, and reducing fire and safety hazards. (D.I. 121 at ¶ 10) Prison officials also point out that boxes kept in cells offer hiding places for contraband and that the "two boxes per inmate"

regulation aims to secure the prison environment. (Id.)

Additionally, allowing prison officials to approve possession of a third box on a case by case basis enables them to screen out inmates who have neither ongoing litigation nor the need to keep extra boxes in their cells. It likewise enables the administration to accommodate those prisoners who truly need extra storage for legal materials. Moreover, prison officials state that although excess materials will be seized by correctional officers,

[d]epartmental policy makes reasonable provisions for inmates to retain, retrieve and/or exchange permitted (non-contraband or excess) documents to ensure that inmates have current pleadings and papers necessary to conduct business with the courts in pending cases.

(Id., Ex. D-2 at ¶ 6) To this end, defendant Burris stated that “[plaintiff] was afforded the opportunity to keep the legal materials of his choice when the items were originally confiscated. There is every reason to believe that the inmate would have kept items necessary for current legal activity so that filing deadlines could be timely met.” (D.I. 94 at ¶ 5) Plaintiff has yet to dispute defendant Burris’s assertion. The court, therefore, finds that there is a rational connection between the regulation and the legitimate government interest put forward to justify it. Accordingly, the first factor described in Turner weighs in favor of finding the “two boxes per inmate” regulation to be reasonable.

With respect to the second factor enumerated in Turner, the court finds no genuine issue of material fact as to whether there are any alternative means for inmates to exercise the right in question, since inmates may possess a third box for storage of their legal materials if they obtain prior written permission. (D.I. 121 at ¶ 10). Plaintiff had been granted such permission in the past, which permission expired on January 13, 1999. (Id., Ex. A-2 at ¶ 4) On June 10, 1999, plaintiff's post-"shakedown" request was granted by defendant Burris and he was given permission to have a third box for legal materials for the following year. (Id., Ex. A-11) Plaintiff has admitted, however, that he did not have permission to possess a third box on the day of the "shakedown," meaning that he had declined to exercise the "alternative means" made available to him by the prison administration. (Id., Ex. C-14-15)

The third factor established by Turner requires courts to consider the possible effects of obliging the prisoner's request, to wit, the impact that the prison's accommodation of plaintiff's asserted right of access to the courts would have on correctional officers and other inmates. If plaintiff were allowed to possess a third box without being required to ask for permission, a potentially enormous ripple effect could result. Other prisoners would likely seek to keep more than two boxes in their cells, citing the leniency afforded to plaintiff as precedent. This

would be highly detrimental to the penological goals served by the "two boxes per inmate" regulation. If prisoners were allowed to keep more than two boxes in their cells it would be markedly easier for prisoners to hide contraband, including weapons, which would jeopardize the safety of both the correctional officers and other inmates. Likewise, inmates' cells would become more cluttered, creating a fire hazard and increasing the possibility that prisoners could use the excess boxes to block the doors to their cells. In light of these concerns, the court gives deference to the "informed discretion of corrections officials" at DCC, Turner, 482 U.S. at 90, and concludes that the third factor tips in favor of a finding of reasonableness.

As to the final Turner factor, "if an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at de minimis cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard." Turner, 482 U.S. at 91. In the present case, no genuine issue of material fact exists with respect to this factor. Plaintiff has yet to suggest **any** alternative to the system employed by defendants, let alone one with minimal cost to the penological interests furthered by the regulation in question. Accordingly, the court concludes that the fourth factor weighs in favor of finding that the "two boxes per inmate" rule is reasonable.

In sum, pursuant to the factors set forth in Turner v. Safley, the court finds that the regulation requiring prisoners to get written permission to have more than two boxes in their cells is reasonably related to valid correctional goals. The rule is content neutral, and it logically advances the goals of institutional security and safety. Likewise, it is not an exaggerated response to those objectives. Consequently, the court cannot conclude that plaintiff's First and Fourteenth Amendment rights have been violated. As such, the court grants defendants' motion to dismiss.<sup>3</sup>

#### **V. CONCLUSION**

For the reasons stated above, defendants' renewed motion to dismiss is granted. Defendants' motion for a protective order and plaintiff's motion for appointment of counsel, motion to strike, motion for leave to file an amended complaint, and motions to compel discovery are denied as moot. An appropriate order shall issue.

---

<sup>3</sup>In light of the court's decision to grant defendants' motion to dismiss the case for failure to state a claim, defendants' motion for a protective order and plaintiff's motion for appointment of counsel, motion to strike, motion for leave to file an amended complaint, and motions to compel discovery are denied as moot.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KEVIN HOWARD, )  
 )  
Plaintiff, )  
 )  
v. ) Civ. No. 01-376-SLR  
 )  
ROBERT SNYDER, STAN TAYLOR, )  
FRANCINE KOBUS, JOHN DOE #1, JOHN )  
DOE #2, ANGELA LATSKO, WAYNE )  
MASSEY, DOREEN WILLIAMS, LESMA )  
JONES, ELIZABETH BURRIS, CHARLES )  
CUNNINGHAM, JOHN AND JANE DOE, )  
and PAUL HOWARD, )  
 )  
Defendants. )

**O R D E R**

At Wilmington, this 15th day of June, 2004, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendants' renewed motion to dismiss (D.I. 121) is granted.
2. Defendants' motion for a protective order (D.I. 145) is denied.
3. Plaintiff's motion for the appointment of counsel (D.I. 112) is denied.
4. Plaintiff's motion to strike affidavits from defendants' renewed motion to dismiss (D.I. 126) is denied.
5. Plaintiff's motion for leave to file an amended complaint (D.I. 127) is denied.

6. Plaintiff's motions to compel discovery (D.I. 134, 135, 136, 137, 143) are denied.

Sue L. Robinson  
United States District Judge