

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JERON D. BROWN, :
 :
 Plaintiff, :
 : Civil Action No. 00-560-JJF
 v. :
 :
 SGT. D. M. WILLIAMS and :
 COUNSELOR MR. KROMKA, :
 :
 Defendants. :

Jeron D. Brown, Plaintiff, pro se, Wilmington, Delaware.

Stuart B. Drowos, Esquire, Deputy Attorney General, Wilmington
Delaware.
Attorney for the Defendant.

MEMORANDUM OPINION

December 17, 2001
Wilmington, Delaware

FARNAN, District Judge

Presently before the Court is a Motion To Dismiss filed by Defendant Sgt. D. M. Williams (hereinafter "Defendant") pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 15). Defendant has submitted materials outside of the pleadings and, in his reply brief, has requested that the Court alternatively treat his Motion as a Motion For Summary Judgment. (See D.I. 20). Although not in conformity with the District's Local Rules, Plaintiff Jeron D. Brown (hereinafter "Plaintiff") has filed a sur-reply brief which addresses Defendant's alternative request. (D.I. 22). Because the Court will consider Plaintiff's sur-reply brief, the Court concludes that the Plaintiff has had a "reasonable opportunity" to respond to Defendant's delayed request to treat his Motion as a Motion For Summary Judgment. See In re Rockefeller Center Properties, Inc., 184 F.3d 280, 288 (3d Cir. 1999) (citing Rose v. Bartle, 871 F.2d 331, 340 (3d Cir. 1989))(holding that the Court must provide a "reasonable opportunity" for the parties to respond before a motion is converted to a motion for summary judgment). Accordingly, pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court will consider the materials submitted in addition to the pleadings and will treat Defendant's Motion as one for Summary

Judgment in accordance with Federal Rule of Civil Procedure 56.

For the reasons set forth below, Defendant's Motion For Summary Judgment will be granted.

I. Background

Defendant is a Correctional Officer employed at the Multi-Purpose Criminal Justice Facility (hereinafter "MPCJF") in Wilmington, Delaware, where Plaintiff, a pro se litigant, is incarcerated. (D.I. 5 at 1). On October 20, 1999, Defendant was instructed by his superior officer, Captain Bradley Lee, to conduct a search of inmate Rudolph Hardin's cell based on information that Hardin was in possession of contraband. (D.I. 16, Ex. A). The search of Hardin's cell confirmed that Hardin was in possession of contraband, including photocopies of pornographic pictures and letterhead writing paper. (D.I. 16, Ex. A; D.I. 20). Defendant immediately questioned Hardin regarding the source of the contraband found in his possession and Hardin indicated that Plaintiff was his supplier. After a brief investigation, Defendant learned from MPCJF's law librarian that Plaintiff was a member of MPCJF's work program, worked in MPCJF's law library, and had unsupervised access to the photocopier. (D.I. 16, Ex. A).

On October 23, 1999, Plaintiff was removed from MPCJF's work program and transferred to a non-work program cell pending further investigation. (D.I. 2 at 4; D.I. 16, Ex. A). In immediate response to the transfer, Plaintiff filed a grievance report against Defendant on October 23, 1999. (D.I. 2 at 4). On November 1, 1999, Defendant was notified of Plaintiff's grievance by MPCJF's Grievance Chair. (D.I. 2 at 5).

On November 5, 1999, Defendant and another correctional officer were ordered by Captain Lee to search Plaintiff's cell in furtherance of the pending investigation.¹ Because this search revealed contraband similar to that found in Hardin's cell, Defendant filed a discipline report against Plaintiff, charging both Class One and Two Offenses. (D.I. 16, Ex. A; D.I. 2 at 7). Plaintiff was subsequently exonerated of these charges at a discipline hearing held on December 10, 1999, and on December 17, 1999, Plaintiff was moved back to a work program cell. (D.I. 2 at 10).

II. Procedural History

On June 9, 2000, Plaintiff filed a complaint against

¹ Although Plaintiff contends that there is no clear evidence which illustrates that Captain Lee ordered Defendant to search Plaintiff's cell, Defendant has supplied a memorandum to MPCJF's Grievance Chair, written by Major Perry Phelps, which confirms this fact. (D.I. 16, Ex. A and C).

Defendant alleging violations of his First, Fourth, Eighth and Fourteenth Amendment rights under the United States Constitution.² (D.I. 2 at 13, 28, 39). On September 21, 2000, Plaintiff's Fourth, Eighth and Fourteenth Amendment claims were dismissed as frivolous pursuant to 28 U.S.C. § 1915. (D.I. 5). Accordingly, Plaintiff's First Amendment Retaliation Claim, made pursuant to 42 U.S.C. § 1983, is the only remaining claim.

III. Standard of Review

Under Rule 56 of the Federal Rules of Civil Procedure, a party is entitled to summary judgment if the court determines that there are no genuine issues of material fact, and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). In determining whether there is a triable issue of material fact a court must review all of the evidence and construe all of the inferences in a light most favorable to the non-moving party. Spain v. Gallegos, 26 F.3d 439, 446 (3d Cir. 1994) (citing Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1230 (3d Cir. 1993)).

² Plaintiff also filed a Complaint against Mr. Kromka, a Counselor at MPCJF, alleging Fourteenth Amendment violations. (D.I. 5) However, all claims against Mr. Kromka have been dismissed pursuant to 28 U.S.C. § 1915, and thus, these claims will not be addressed. (D.I. 5)

IV. Discussion

A First Amendment retaliation claim made by a prisoner-plaintiff pursuant to 42 U.S.C. § 1983 must establish three elements. First, a plaintiff must prove that he or she has a protected First Amendment right in the speech at issue. Rausser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001). Second, a plaintiff must establish that he or she has suffered an "adverse action" at the hands of a prison official. Allah v. Seiverling, 229 F.3d 220, 225 (3d Cir. 2000). Finally, a plaintiff must establish a causal connection between the assertion of his or her protected speech and the adverse action taken. Rausser, 241 F.3d at 333.

In this case, there is not an issue with regard to the first and second elements of Plaintiff's retaliation claim. Specifically, a prisoner has a protected First Amendment right in filing a grievance report against a prison official. See Quinn v. Cunningham, 879 F.Supp. 25, 27-28 (E.D. Pa. 1996), aff'd, 85 F.3d 612 (3d Cir. 1996). Additionally, Defendant's search of Plaintiff's cell subsequent to the filing of Plaintiff's grievance report could be "sufficient to deter a [prisoner] of ordinary firmness from exercising his constitutional rights," and thus, could constitute an "adverse action." See Allah v. Seiverling, 229 F.3d 220, 225 (3d Cir.

2000). Accordingly, the Court need only address the third "causal connection" element of Plaintiff's retaliation claim.

The causal connection element of a retaliation claim requires a burden shifting analysis. Specifically, a plaintiff bears the initial burden of proving that his or her protected speech was a "substantial or motivating" factor in the defendant's decision to take adverse action. Rausser, 241 F.3d at 333. Then, if a plaintiff establishes this connection, the burden shifts to defendant to prove by a preponderance of the evidence that he or she would have taken the same action absent the protected speech. Id.

In determining whether a causal connection exists, the Court must consider the temporal proximity between the assertion of the protected speech and the contended adverse action. Id. at 334. The Court, however, should also afford deference to the decisions of prison officials in light of the difficulty in administering a prison. Id. For example, actions by prison officials which impinge on the constitutional rights of an inmate are nonetheless valid if they are "reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987).

Plaintiff contends that both the timing of Defendant's

search and Defendant's conduct illustrates that Defendant searched Plaintiff's cell in retaliation for the grievance Plaintiff filed against Defendant. (D.I. 21 at 2-3). Specifically, Plaintiff contends that while Defendant neglected to search his cell in the twelve days that passed between the search of Hardin's cell and the time Defendant learned of Plaintiff's grievance, Defendant searched Plaintiff's cell just four days after he learned of the grievance. (D.I. 21 at 2-3). Additionally, Plaintiff contends that Defendant should have, in good faith, notified Captain Lee of Plaintiff's grievance before searching Plaintiff's cell. (D.I. 22 at 3).

Defendant, on the other hand, contends that his search of Plaintiff's cell was not performed in retaliation for Plaintiff's grievance, but rather, in response to an order by his superior officer, Captain Lee. (D.I. 16, ¶ 5). Specifically, Defendant contends that Captain Lee ordered the search of Plaintiff's cell as part of the continuing investigation of Plaintiff, which was initiated by the information Defendant obtained from Hardin and the MPCJF librarian. (D.I. 20, ¶ 4).

After reviewing the contentions of the parties and the applicable law, the Court concludes that Defendant's search of

Plaintiff's cell was supported by a legitimate penological interest and was not a retaliatory action. Specifically, as evidenced by Major Phelps' Memorandum to MPCJF's Grievance Chair, Captain Lee ordered Defendant to conduct the search of Plaintiff's cell only after learning of the incriminating information supplied by both inmate Hardin and MPCJF's librarian. (D.I. 20, ¶ 4; D.I. 16, Ex. C). The Court finds that the purpose of the search was to determine whether Plaintiff was in fact the supplier of the contraband found in Hardin's possession. Additionally, although Defendant did search Plaintiff's cell just four days after he learned of Plaintiff's grievance, the Court is convinced that the ongoing investigation and the order of Captain Lee for Defendant to conduct the search illustrate that retaliation was not the purpose intended by Defendant. Therefore, Defendant's Motion For Summary Judgment (D.I. 15) will be granted.

V. Conclusion

For the reasons discussed, the Court will enter an order granting Defendant's Motion For Summary Judgment (D.I. 15) pursuant to Federal Rule of Civil Procedure 56.

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ORDER

At Wilmington this 17 day of December, 2001, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendant Sgt. D. M. Williams' Motion For Summary Judgment (D.I. 15) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE