

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NORMAN MORRISSEY,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 00-652-GMS
)	
PAUL HOWARD, ROBERT SNYDER,)	
and ELIZABETH BURRIS,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

I. INTRODUCTION

The plaintiff, Norman Morrissey (“Morrissey”), filed this *pro se* prisoner civil rights action pursuant to 42 U.S.C. § 1983. Morrissey is currently incarcerated at the Sussex Correctional Institute Center (S.C.I.). In his complaint, Morrissey alleges Bureau Chief of Prisons Paul Howard, Delaware Correctional Center (D.C.C.) Warden Robert Snyder, and D.C.C. Deputy Warden Elizabeth Burris (collectively “the defendants”) deprived him of his constitutional rights by wrongfully transferring him from the D.C.C. to the S.C.I. after he was assaulted by another inmate. From the complaint, it appears Morrissey asserts that the defendants violated his rights under the Eighth and Fourteenth Amendments as a result of their failure to protect him and they also violated his rights by subsequently transferring him to the S.C.I.

On December 12, 2000, the defendants filed a motion to dismiss or for summary judgement (D.I. 11). On March 19, 2001, the court ordered Morrissey to file an answering brief within thirty days and explained that his failure to do so would result in dismissal (D.I. 13). Morrissey failed to respond to the

defendants' motion. As a result, the court dismissed the complaint for failure to prosecute and denied as moot the motion to dismiss (D.I. 14). On August 20, 2001, Morrissey filed an answer to the defendants' motion to dismiss and for summary judgment (D.I. 16).¹ The defendants filed a reply brief on August 23, 2001 (D.I. 17).

II. BACKGROUND

Morrissey is currently serving a life sentence at the S.C.I. He was transferred to the S.C.I. from the D.C.C. after being involved in an altercation with another inmate on April 15, 1999. As a result of their encounter, both inmates were charged with assault, disorderly conduct, threatening behavior and being off limits. Due to overcrowding and the need to separate the inmates for security reasons, Morrissey was transferred to the S.C.I. while the other inmate was reassigned within the D.C.C. The record is silent regarding any complaint of physical injury to Morrissey. The complaint alleges property loss, but provides no factual details or evidence. Morrissey wishes to be returned to the D.C.C. as soon as possible and be reimbursed for all property confiscated plus pain and suffering and emotional distress.

III. STANDARD OF REVIEW

Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c). An issue is "genuine" if, given the evidence, a reasonable jury could return a verdict in favor of the nonmoving party. *See Mohamed v. Klotz*, 36 F. Supp.2d 240, 243 (E.D. Pa. 1999). At the summary judgment stage, a court may not weigh

¹Morrissey had previously mailed a response to the defendants' motion only to the defendants. Since Morrissey is acting pro se, the court excused his failure to file his response with the court, and allowed the action to continue.

the evidence or make credibility determinations; these tasks are left to the fact finder. *See Abraham v. Raso*, 183 F.3d 279, 287 (3d Cir. 1999). *See id.* Instead, the court can only determine whether there is a genuine issue for trial. In so doing, the court must look at the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences and resolving all reasonable doubts in favor of that party. *See, e.g., Pacitti v. Macy's*, 193 F.3d 766, 772 (3d Cir. 1999).

IV. DISCUSSION

To recover against the defendants, Morrissey must show that he was deprived of a constitutional right by a person acting under the color of state law. *See* 42 U.S.C. § 1983. In this case, the defendants were acting under the color of state law because, at the time of the occurrence of the alleged conduct, they were correctional officers at the state run correctional institution where Morrissey was incarcerated. Thus, the only question raised by Morrissey's motion is whether the defendants violated any of his constitutional rights by failing to protect him from another inmate and by wrongfully transferring him after he was assaulted by another inmate. Even assuming Morrissey's complaint alleges violations of the Eighth Amendment's prohibition on cruel and unusual punishment and the Fourteenth Amendment's mandate on due process, his claims cannot succeed.

A. Eighth Amendment

Morrissey first alleges cruel and unusual punishment under the Eighth Amendment.

In a confinement case, an analysis of whether a prison official violated the Eighth Amendment must begin with the test elucidated by the Supreme Court in *Farmer v. Brennan*:

In order to establish an Eighth Amendment violation by a prison official, two requirements must be met. First, the alleged deprivation must be objectively "sufficiently serious." Thus, where the alleged violations can be described as a failure to prevent harm, the inmate must show that his or

her conditions of incarceration posed a “substantial risk of serious harm.” Second, the prison official’s state of mind must be one of “deliberate indifference” to the inmate’s health or safety.

Carrigan v. Delaware 957 F. Supp 1376, 1381 (1997) (citing *Farmer v. Brennan* 511 U.S. 825, 833-35 (1994)). Usually, liability attaches to prison officials’ conduct only when punishment meted out is “inconsistent with contemporary standards of decency” and “repugnant to the conscience of mankind in violation of the Eighth [Amendment].” See *Whitley v. Albers* 475 U.S. 312, 327 (1986).

Morrissey fails to meet both the objective and subjective components necessary to establish an Eighth Amendment violation. He does not state any conditions that satisfy the objective threshold of a “substantial risk of serious harm.” Indeed, he does not claim that he and the other inmate ever had a physical altercation prior to the incident. After the alleged assault, Morrissey was removed to the S.C.I., ensuring that the two inmates would be separated.

The subjective component requires a showing of deliberate indifference on the part of the prison official. “Deliberate indifference requires that the official know of and disregard an excessive risk to the inmate’s health and safety. In other words, the ‘official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw that inference.’” See *Farmer* at 511 U.S. at 837.

Morrissey alleges he complained of a specific threat of violence. The record, however, lacks documentation of such a complaint. Even though he filed a complaint after the incident, in which he bemoaned his transfer, he made no mention of a specific threat of violence prior to the alleged assault. Put simply, there is nothing on the record to show that Morrissey provided the defendants with the necessary notice required to hold them liable under a theory of failure to protect. Therefore, the defendants cannot

be said to have displayed a “deliberate indifference” to a “substantial risk” of serious harm to Morrissey; the evidence is insufficient to show the defendants’ knowledge of a serious risk of harm to Morrissey.

B. Fourteenth Amendment

Morrissey also alleges that the defendants have violated his Fourteenth Amendment due process rights by transferring him from the D.C.C. to the S.C.I. However, an inmate’s classification does not implicate the due process clause.² While Morrissey may be dismayed at his removal to another compound, it creates no corresponding liability for the officials who authorized it.

The Supreme Court has also addressed Fourteenth Amendment violations with regard to prison transfers. In *Sandin v. Conner*, the Supreme Court engaged in a comprehensive analysis of its approach to Due Process claims. 515 U.S. 472 (1995). The approach taken in *Sandin* requires courts to determine whether the interest in issue is an “atypical, significant deprivation in which a state might conceivably create a liberty interest.” *See id.* at 486. While an inmate may have an interest in a particular security classification or in being assigned to a particular institution, it is not an interest protected by the Due Process clause.

The transfer in this case, made to facilitate peace and deal with overcrowding issues, imposes no “atypical or significant hardship.” Rather than a disadvantage, the transfer provided Morrissey additional safety and security. Morrissey has no constitutionally recognized right to stay at the prison of his choosing.

²There is also no state statute which creates a constitutionally protected interest in an inmate’s classification. With respect to this claim, 11 Del. C § 6259 paragraph (e) specifically states: “Nothing in this chapter shall be construed to require the Department to institute or maintain any system of classification of convicted persons for the purpose of assignment to institutions or housing units within institutions.” 11 Del. C. § 6259(e).

Thus, the transfer did not work an “atypical significant deprivation.” Moreover, he must bear the responsibility that accompanied his role as aggressor in a fight with another inmate.

V. CONCLUSION

There are no discrepancies in the factual allegations asserted with regard to events concerning Morrissey’s transfer. Since there are no discrepancies, there are no genuine issues of material fact, and the court can safely enter judgment as a matter of law in the defendant’s favor. Therefore, the court will grant the defendants’ motion.

Therefore, IT IS HEREBY ORDERED that:

- A. The defendant’s motion for summary judgment (D. I. 11) is GRANTED.
- B. Judgment BE AND IS HEREBY ENTERED in favor of the defendants on all claims against them.

Dated: September 17, 2001

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE