IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID STEVENSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-732-KAJ
	)	
ROBERT E. SNYDER, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

David Stevenson, SBI #00317036, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977, *pro se* plaintiff.

Richard W. Hubbard, Esq., Deputy Attorney General, State of Delaware Department of Justice, Carvel State Building, 6th Floor, 820 N. French Street, Wilmington, Delaware 19801, counsel for defendants.

Wilmington, Delaware
March 4, 2004

JORDAN, District Judge

I. INTRODUCTION

Presently before me are a Motion for a Temporary Restraining Order (Docket Item ["D.I."] 26) and a Motion for an Order to Show Cause and for a Preliminary Injunction (D.I. 28) filed by plaintiff David Stevenson, an inmate at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. Also before me is a Motion for Summary Judgment filed by defendants Thomas Carroll, the DCC warden ("Carroll"), and Joe Hudson ("Hudson"), the mail room supervisor at the DCC (collectively, "Defendants"). (D.I. 28.) Plaintiff brings this action under 42 U.S.C. § 1983, alleging that Defendants have violated his rights under the First and Fourteenth Amendments to the United States Constitution by banning all sexually explicit materials from the DCC. (D.I. 2.) Jurisdiction is proper under 28 U.S.C. § 1331. For the reasons that follow, Defendants' Motion for Summary Judgment will be granted, and Plaintiff's Motions for a Temporary Restraining Order, to Show Cause, and for a Preliminary Injunction will be denied as moot.

II. BACKGROUND

The material facts giving rise to this action are not in dispute. On January 1, 2000, the DCC instituted a policy stating that "sexually explicit material will no longer be received for and distributed to inmates at the [DCC]." (D.I. 2, Ex. 1; the "Policy".) In a memorandum sent to all DCC staff and inmates on November 29, 1999, the warden[1]

[1]At the time the memorandum was sent, the warden at the DCC was Robert E. Snyder. Plaintiff originally named Warden Snyder as a defendant in this lawsuit. However, Thomas Carroll became the warden at the DCC while this action was pending. On April 23, 2002, Plaintiff was granted leave to substitute Warden Carroll for Warden Snyder as a defendant in this lawsuit. (D.I. 13.)

explained that the Policy was being instituted due to the "need for facility security, safety, health, order and discipline, and inmate rehabilitation and ... limited staff resources ... ." (*Id.*) The Policy defines sexually explicit material as

> any pictorial or written depiction of actual or simulated sexual acts including sexual intercourse, oral sex, and/or masturbation; any pictorial or written demonstration, depiction, or symbolization of nudity, frontal or otherwise; and any promotion of sexual activity of any manner.

(*Id.*) All sexually explicit items are prohibited, except those "containing nudity illustrative of medical, educational, and anthropological content" or having "scholarly value or general social or literary value." (*Id.*) When the DCC receives a sexually explicit publication, it sends a notice to the inmate and the sender "notifying them that the item is not permitted" into the DCC. (*Id.*) The inmate then has five days to notify the Mail Room how to dispose of the item, and, if the inmate fails to do so, the item is disposed of "according to the institutional operating procedures." (*Id.*)

Plaintiff, who is currently incarcerated at the DCC, ordered a subscription to *Cheri* magazine in November 1999 and a subscription to *Stuff* magazine in January 2000. (*Id.* at ¶ 8.) Plaintiff admits that *Cheri* magazine constitutes sexually explicit material as defined in the Policy. (*Id.* at ¶ 6.) Plaintiff describes *Stuff* magazine as "a mainstream men's magazine without nudity or other sexually explicit material." (*Id.* at ¶ 6.)

When Plaintiff did not receive *Cheri* magazine within three to four weeks after ordering a subscription, he wrote to the mail room to ask whether it arrived. (*Id.* at ¶ 10.) Plaintiff did not receive a response to his inquiry, so he instituted a grievance on December 1, 1999. (*Id.* at ¶¶ 10-12.) After conducting a hearing on December 29,

1999, the DCC grievance committee dismissed all of Plaintiff's claims, a decision which he appealed. (*Id.* ¶¶ 14-18.) At the time Plaintiff filed this action, the appeal was pending. (*Id.* at ¶ 19.)

Plaintiff received *Stuff* magazine from approximately January 2000 to June 2000, at which time it was "banned from [the DCC] by defendant Joe Hudson without explanation." (*Id.* at ¶ 21.) Plaintiff wrote a letter to Hudson on June 1, 2000, explaining that "Stuff magazine is not pornographic material." (*Id.* at ¶ 22.) The next day, Plaintiff received a letter explaining that Hudson had banned *Stuff* magazine, prompting Plaintiff to send a letter to the warden on June 5, 2000, asking him "to reconsider defendant Joe Hudson's decision about Stuff magazine." (*Id.* at ¶ 24.)

Plaintiff requests a declaratory judgment that the Policy violates the First Amendment and is "constitutionally vague" and that Hudson's "policy of 'blanket' bans" violates the First and Fourteenth Amendments. (*Id.* at § V.) Plaintiff also requests an injunction ordering Defendants to suspend the Policy to prevent them from interfering with the delivery of sexually explicit material to inmates at the DCC. (*Id.*) Finally, Plaintiff requests "reimbursement for sexually explicit material not delivered to inmates ... ." (*Id.*)

Defendants filed a Motion for Summary Judgment on May 16, 2003 (D.I. 28), arguing that the Policy at issue does not violate the First and Fourteenth Amendments because it is "reasonably related to legitimate penological interests," as required by *Turner v. Safley*, 482 U.S. 78, 89 (1987). (D.I. 29 at 3.) Defendants also argue that an inmate's right to due process is satisfied by the notice procedure contained in the Policy. (*Id.* at 6.)

III. STANDARD OF REVIEW

Summary judgment is proper 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 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 (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." *Pa. 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. *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

The issues raised in this case were fully addressed in Judge Joseph J. Farnan's decision in *Jolly v. Snyder*, 2003 WL 1697539 (D. Del. Mar. 22, 2003). In *Jolly,* Judge Farnan dismissed several DCC inmates' claims that their First and Fourteenth Amendment rights were being violated by the same Policy that is challenged in this case. *Id.* at *6. Applying the reasonableness factors set forth in *Turner*, 482 U.S. at 89-91, Judge Farnan determined, as a matter of law, that the Policy furthered the penological goals of maintaining prison security and rehabilitating sex offenders and was narrowly tailored. *Jolly*, 2003 WL 1697539 at *5. Therefore, the inmates failed to state a claim under the First and Fourteenth Amendments.[2] *Id.* at *5, *6.

The facts of *Jolly* and the instant case are virtually identical and the legal analysis set forth therein is directly on point with the issues raised here. Therefore, for the reasons set forth in *Jolly*, Defendants' Motion for Summary Judgment will be granted and Plaintiff's Motions for a Temporary Restraining Order, an Order to Show Cause and for a Preliminary Injunction will be denied as moot. An appropriate order will issue.

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[2]Procedurally, *Jolly* was decided on a Motion to Dismiss, while this case has reached the summary judgment stage. In this case, the distinction is of no moment. The facts of this case are undisputed, and here, as in a motion brought under Federal Rule of Civil Procedure 12(b)(6), Plaintiff is not entitled to relief under any set of facts because, as a matter of law, the Policy does not violate any of Plaintiff's constitutional rights.

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ORDER

For the reasons set forth in the Memorandum Opinion issued today, it is hereby ORDERED that Defendants' Motion for Summary Judgment (D.I. 28) is GRANTED and Plaintiff's Motions for a Temporary Restraining Order (D.I. 26) and an Order to Show Cause and for a Preliminary Injunction (D.I. 32) are DENIED as moot.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
March 4, 2004