

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS L. MOORE, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 01-031-JJF
 :
 GANDER HILL PRISON, et al., :
 :
 Defendant. :

Thomas L. Moore, Pro Se Plaintiff.

Stuart B. Drowos, Esquire, Deputy Attorney General, DELAWARE
DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Defendants

MEMORANDUM OPINION

July 22, 2003
Wilmington, Delaware

FARNAN, District Judge

Pending before the Court is the Motion for Summary Judgment (D.I. 62) filed by State Defendants Raphael Williams, State of Delaware Department of Correction, the Multi-Purpose Criminal Justice Facility ("Gander Hill"), Correctional Commissioners, Correctional Board of Directors, Perry Phelps, Eldora Tillery, Irving Young, C/O Sutton, George Hawthorne, Stan Taylor and Paul Howard (collectively, "Defendants"). For the reasons discussed below, the Court will grant the Motion.

BACKGROUND

Plaintiff Thomas L. Moore is a former inmate at Gander Hill who ordered several books that exceeded the 1,000 page limit set by Gander Hill. Upon receipt of the requested books (Black's Law Dictionary and The Indispensable PC Hardware Book), Gander Hill sent notice to Moore that they were unable to deliver the books to him because they exceeded the 1,000 page limit. Gander Hill asked Moore whether he wanted to send the books back to the publisher or forward them to a new address, and after Moore neglected to answer within the allotted time, the books were donated to charity. Moore later received the Oxford Pocket Dictionary and Thesaurus and Black's Law Dictionary in paperback versions that were less than 1,000 pages. Plaintiff filed this action alleging that his rights under the First, Eighth, and Fourteenth Amendments of the United States Constitution were

violated by the application of Gander Hill's policy of excluding books in excess of 1,000 pages. By his Complaint, Plaintiff to enjoin Gander Hill's policy of excluding books over 1,000 pages. Plaintiff also seeks compensatory damages for the costs associated with purchasing and shipping the books that were donated to charity.

STANDARD OF REVIEW

When a court analyzes a motion for summary judgment brought under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper "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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment bears the initial burden of identifying for the court the portions of the record which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once a properly supported motion for summary judgment is made, the nonmoving party then "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). To determine whether there is a genuine issue for trial, the court must decide whether "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party."

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In other words, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial” and summary judgment is appropriate. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

DISCUSSION

I. Injunctive Relief

Article III of the United States Constitution requires that Federal Courts limit the exercise of their judicial power to actual cases or controversies. U.S. Const. art. III, § 2. Federal Courts are thus unable to review the merits of cases that are moot. New Jersey Turnpike Authority v. Jersey Central Power and Light, 772 F.2d 25, 31 (3d Cir. 1985). A case is moot when “the alleged violation has ceased and there is no reasonable expectation that it will recur” Id.

In Weinstein v. Bradford, the United States Supreme Court held that a former parolee’s constitutional challenges to the procedures determining his eligibility for parole became moot upon his complete release from supervision because the plaintiff no longer had a personal interest in the operation of the parole system. 423 U.S. 147 (1975). Here, based on similar reasoning, the Court concludes that Plaintiff’s claim regarding Gander Hill’s policy is moot because of his August 15, 2002 release from

Gander Hill.

II. Compensatory Relief

A. First Amendment

Moore makes no response to Defendants' Motion for Summary Judgment.¹ By his Complaint, Plaintiff contends that Gander Hill violated his First Amendment rights by refusing to allow him to receive books over 1,000 pages.

Defendants contend that Moore's First Amendment rights were not violated. Defendants contend that Gander Hill handles the largest number of inmate admissions in the state, and must mandate strict policies and procedures to ensure order and security for its employees and inmate population. Inmates are permitted to order legal and career-oriented publications, and they are aware of the procedures limiting what they can receive. One policy Gander Hill uses to maintain order and security is to prohibit any books over 1,000 pages to be shipped to inmates. Defendants contend that this policy is necessary to prevent contraband from entering the prison. Defendants also contend that books over 1,000 pages would unduly hamper the intake process and requisite inspection of inmate mail by mail room personnel. Defendants assert that the policy is a legitimate and

¹ Moore's response brief was originally due on October 11, 2002. In a March 24, 2003 order (D.I. 65), the Court gave Moore until April 25, 2003, to file a response brief. As of July 11, 2003, Moore has not filed a response. Accordingly, the Court will decide the Motion on the papers before it.

neutral procedure and hence is not a violation of inmates' First Amendment rights.

A prison regulation impinging an inmate's constitutional rights is valid if it is reasonably related to a penological interest. Turner v. Safley, 482 U.S. 78, 89 (1987); Thornburgh v. Abbott, 490 U.S. 401, 407 (1989). In Turner, the United States Supreme Court identified four factors in determining whether the impingement on constitutionally protected rights is reasonable: (1) whether there is a valid rational connection between the prison regulation and the legitimate governmental interest put forward to justify it; (2) whether there are alternative means of expressing the right; (3) whether accommodation of the right would have a negative impact on guards, other inmates, and prison resources; and (4) whether there is an absence of obvious, easy alternatives. 482 U.S. at 89-90. When evaluating these factors, the Court will give appropriate deference to the prison officials in charge of running prison facilities. Id. at 84-85. The United States Supreme Court has also stated that maintaining security in prison facilities is a legitimate penological interest. O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987).

In the instant case, the Court concludes that the prison regulation prohibiting prisoners from receiving books over 1,000 pages has a rational and valid connection to the legitimate

governmental interest of maintaining security. The policy helps keep contraband out of prisons because books over 1,000 pages are easier to hide materials in than smaller books. Additionally, Defendants have shown that there are alternative means for Moore to obtain the requested texts, and in fact, he has done so by ordering a paperback version of at least one of the previously prohibited books. If Defendants were to allow Moore to receive 1,000 page books, they would have to allow all prisoners to do so. This would hamper mail room inspectors who have to examine all books for contraband and, consequently, would compromise the security of the prison. For these reasons, the Court concludes that Gander Hill's policy of excluding books over 1,000 pages is reasonably related to the legitimate penological interest of maintaining security and excluding contraband.

B. Eighth Amendment

Plaintiff contends that Gander Hill's policy prohibiting books in excess of 1,000 pages violates Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment.

In response, Defendants contend that they did not infringe on Moore's Eighth Amendment right because Moore is unable to show wanton and unnecessary infliction of pain by the Defendants.

The Court concludes that there is no genuine issue of material fact as to whether Plaintiff's Eighth Amendment right was violated. The Court finds that Plaintiff has not alleged any

facts that demonstrate "the wanton and unnecessary infliction of pain." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Accordingly, the Court concludes that summary judgment is appropriate as to this issue.

C. Fourteenth Amendment

1. Equal Protection

Plaintiff contends that his equal protection rights under the Fourteenth Amendment were violated when Gander Hill allowed others to receive legal books that he was not permitted to receive.²

Defendants contend that Gander Hill did not violate Moore's right to equal protection under the Fourteenth Amendment. Specifically, Defendants contend that Plaintiff presents no facts that demonstrate that other inmates have received 1,000 page books that Moore did not receive because of his race, religion, national origin, or other such constitutionally protected classification.

The Court concludes that Plaintiff has alleged no facts that demonstrate that his equal protection rights under the Fourteenth Amendment were violated by Gander Hill. Accordingly, the Court will grant summary judgment as to this issue.

2. Due Process

²Plaintiff contends that "Ganderhill was fast to allow Mr. Thomas Capano [sic] as I understand it, any information he requested." (D.I. 3 at 1).

Plaintiff contends that his due process rights under the Fourteenth Amendment were violated by Gander Hill's inmate grievance process. Plaintiff contends that the inmate grievance board is biased because the grievant is not permitted to give his account of the occurrence, but instead, is only allowed to answer "yes" or "no" to questions asked by the board.

Defendants contend that the grievance process Moore utilized to express his concern over not receiving his books is not constitutionally protected, and thus Moore's due process claim is without merit.

Inmates "do not have a constitutionally protected right to a grievance procedure," and furthermore, "a state grievance procedure does not confer any substantive constitutional right upon prison inmates." Hoover v. Watson, 886 F. Supp. 410, 418 (D. Del. 1995). Therefore, the Court concludes that Plaintiff's due process claim is without merit and will grant summary judgment as to this issue.³

CONCLUSION

For the reasons discussed, State Defendants' Motion for Summary Judgment (D.I. 62) will be granted.

An appropriate order will be entered.

³Because the Court concludes that there is no constitutional violation, the Court will not address Defendants' arguments based on Eleventh Amendment immunity, the doctrine of sovereign immunity, entitlement to qualified immunity, and the cognizance of negligence as a cause of action under § 1983 or, alternatively, the shielding of liability for acts done without gross negligence by the state Tort Claims Act.

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	:	
Defendants.	:	

ORDER

At Wilmington this 22nd day of July 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that State Defendants' Motion for Summary Judgment (D.I. 62) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE