IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

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| ANTHONY J. KELLAM, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Civ. No. 01-405-SLR |
| | ) | |
| M. BRITTINGHAM, and JOHN STOLZEBACH, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

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Anthony J. Kellam, Delaware Correctional Center, Smyrna, Delaware. Plaintiff, pro se.

Aaron R. Goldstein, Esquire, Deputy Attorney General, State of Delaware Department of Justice, Wilmington, Delaware. Counsel for Defendants.

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**MEMORANDUM OPINION**

Dated: March 31 2005
Wilmington, Delaware

ROBINSON, Chief Judge

## I. INTRODUCTION

On June 15, 2001, plaintiff Anthony Kellam filed this pro se complaint alleging violations of his civil rights pursuant to 42 U.S.C. § 1983. (D.I. 2) Defendants answered the complaint on September 24, 2004. (D.I. 28) Defendants propounded discovery and plaintiff's deposition was taken on December 23, 2004. (D.I. 31, 32, 35) Plaintiff has not responded to defendants' discovery requests. (D.I. 33) On January 7, 2004, defendants moved for summary judgment. (D.I. 38) Plaintiff has not filed a response. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. For the reasons that follow, defendants' motion for summary judgment is granted.

## II. BACKGROUND

In his complaint, plaintiff alleges that on April 21, 2001 defendant Stolzebach accused plaintiff of being involved in "some type of altercation with another inmate." (D.I. 2) As a result of this altercation, plaintiff avers that he was placed in administrative segregation from April 21, 2001 to May 2, 2001. At a disciplinary hearing held on a later date, plaintiff was found not guilty of the allegations and the charges were dismissed. (Id.) He contends that defendants violated his constitutional rights by placing him in administrative segregation based entirely on uncorroborated information given by

another inmate.[1]

**III. STANDARD OF REVIEW**

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. 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

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[1]Although his complaint also includes an allegation that defendant Stolzebach is racially biased against blacks, the court understands that this claim is no longer a part of plaintiff's lawsuit as he neither presented elaboration nor included it as part of his summary of the claims made at his deposition. (D.I. 39, Ex. A at 14, 15, 17)

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).

**III. DISCUSSION**

**A. Administrative Segregation**

Defendants assert that summary judgment is warranted because Delaware inmates do not have a right to a particular classification or to a particular housing location, including administrative segregation. (D.I. 39) Hewitt v. Helms, 459 U.S. 460, 468 (1983); Layton v. Beyer, 953 F.2d 839, 845 (3d Cir. 1992).

Although afforded the opportunity, plaintiff has not filed opposition to the motion for summary judgment. His deposition testimony, however, will be construed as a response to the motion

for summary judgment.[2] Specifically, plaintiff testified as follows:

> Q: Okay, this lawsuit is pretty much about your being accused of getting into a fight and then your administrative case.
> A: It says I sucker punched an inmate.
> Q: Okay.
> A: You know what I mean? And I am telling you right now the whole write-up was altercated. Since I have been down here, that write-up was messed up.
> Q: All right, well, I have got a copy that we are going to go over that. But just so I understand you sued defendant Brittingham because he signed off on your - Is it the disciplinary action or is it your movement, which one?
> A: Both.
>
> * * *
>
> Q: So would you agree that it's the fact that [Brittingham] was a supervisor is the reason he is sued here? He didn't do anything?
> A: It's the reason that he should have investigated it. He is the head person in charge that day. He is watch commander, or whatever you want to call it, both. They say shift commander, watch commander, whatever. They both, they the same thing.(sic)
>
> * * *
>
> Q: Tell me what the reason is you sued defendant Stolzebach?
> A: Because he was the officer, you know what I mean, that initially wrote this write-up.
> Q: Okay.
> A: He was the officer, you know what I mean, that

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[2]Toward the conclusion of his deposition testimony, defense counsel advised plaintiff of the status of the case. Specifically, defense counsel said: (1) he intended to file a motion to dismiss; (2) that plaintiff needed to prepare for that filing; (3) that there were discovery requests that plaintiff had not answered; and (4) that plaintiff could make a statement about the case to be included as part of the deposition. (Id. at Ex. A at 69-72) In response, plaintiff acknowledged he understood and had intended to file responses to the interrogatories but never made it to the law library. Plaintiff also stated that this case had been a learning experience that will be helpful the next time he files a lawsuit. (Id.)

> initially wrote the write-up, and it's the same as with [defendant] Brittingham. He didn't do - he went on a say-so. He didn't went on definitely evidence, proof, facts, seeing, I mean eye-to-eye witness. He went on somebody stating, you know what I mean.
>
> * * *
>
> But he went on something that another inmate said that I did something to him. You know what I mean? That's all he went off of. You know what I mean? I mean there was no evidence, you know what I mean, stating that yeah, an officer had seen me hit this boy.

(D.I. 39, Ex. A at 14, 15, 17)

Defendants' version of the events is that defendant Stolzebach ordered plaintiff transferred to administrative segregation after an investigation revealed that plaintiff had punched, without provocation, another inmate. (D.I. 39, Ex. C) Defendant Stolzebach described the events as follows:

> On April 21, 2001, I was assigned to the Merit Building at SCI. Upon receipt of Lieutenant Kuneman's incident report which detailed plaintiff's assault on a fellow inmate, I completed a disciplinary report. I relied completely on the incident report authored by Lieutenant Kuneman in making the disciplinary report.

(Id., Ex. C; C1) According to defendant Brittingham, after reviewing the disciplinary report prepared by defendant Stolzebach and the incident report authored by Kuneman, plaintiff's transfer to administrative segregation was ordered. (Id. at Ex. D) Defendant Brittingham explained this decision as being "vital to institutional security, employee and inmate safety to immediately separate inmates who have been involved in

a fight and to isolate individuals who are believed to represent a danger to the safety of correctional employees and inmates." (Id.) As a result of the transfer, plaintiff was placed in administrative segregation for thirteen days,[3] and later found not guilty of the charges. (Id., Ex. A at 36)

**IV. DISCUSSION**

The United States Supreme Court has explained that an examination of claims based on Due Process violations begins with determining whether a constitutionally protected liberty interest exists. Sandin v. Conner, 515 U.S. 472 (1995). Liberty interests "protected by the Fourteenth Amendment may arise from two sources - the Due Process Clause itself and the laws of the states." Hewitt v. Helms, 459 U.S. 460, 466; Board of Regents v. Roth, 408 U.S. 564, 575 (1972). Liberty interests protected by the Due Process Clause are limited to "freedom from restraint" which imposes "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. at 484. Whether an inmate has suffered an "atypical and significant hardship" as a result of confinement depends on two factors: (1) the amount of time an inmate was placed in disciplinary segregation; and (2) whether the

[3]In his complaint, plaintiff states the placement lasted eleven days. (D.I. 2) Department of Correction records, however, reveal that plaintiff was placed in segregation for thirteen days. (Id. at Ex. E)

conditions of his confinement in disciplinary segregation were significantly more restrictive than those imposed on other inmates in solitary confinement. Shoats v. Horn, 213 F.3d 140, 144 (3d Cir. 2000)(Court found an atypical and significant hardship where inmate spent eight years in solitary confinement); Torres v. Fauver, 292 F.3d 141, 151 (3d Cir. 2002)(finding no protected liberty interest where inmate held in disciplinary detention for 15 days and administrative segregation for 120 days); Smith v. Mensinger, 293 F.3d 641, 654 (3d Cir. 2002)(seven months in disciplinary confinement did not implicate a protected liberty interest); Griffin v. Vaughn, 112 F.3d 703, 708 (3d Cir. 1997)("Given the considerations that lead to transfers to administrative custody of inmates at risk from others, inmates at risk from themselves and inmates deemed to be security risks, etc., one can conclude with confidence that stays of many months are not uncommon.").

Considering that this court has consistently found that the Delaware Department of Correction statutes and regulations do not provide inmates with liberty or property interests protected by the Due Process Clause, the analysis becomes whether plaintiff's transfer to administrative segregation for thirteen days constitutes a violation of Due Process under Sandin. See Jackson v. Brewington-Carr, No. 97-270-JJF, 1999 WL 27124 (D. Del. 1999)(Delaware statutes and regulations do not provide inmates

with a liberty interest in remaining free from administrative segregation or from a particular classification); Ross v. Snyder, Civ. No. 01-346-SLR, 239 F. Supp.2d 397, 400-401 (D. Del. 2002)(same). Spending thirteen days in administrative segregation, the court finds, does not rise to the level of "atypical and significant hardship" defined by Sandin and its progeny.

**B. Sufficiency of Evidence**

To the extent plaintiff alleges a constitutional claim based on the fact that one inmate's version of the events was believed over his version and became the basis of the charges filed against plaintiff, the court is unaware of any constitutional requirement as to the manner or number of witnesses necessary to form the basis of prison disciplinary charges. To the contrary, when the action taken appears to be a rational response to a security problem and there is no evidence that the response is exaggerated, the court will not second guess prison officials. Bell v. Wolfish, 441 U.S. 520 (1979); see e.g. Turner v. Safley, 482 U.S. 78, 84-85 (1987).

**V. CONCLUSION**

For the reasons stated, defendants' motion for summary judgment is granted.[4] An appropriate order shall issue.

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[4]Because the court concludes that there is no constitutional violation, it is unnecessary to address defendants' entitlement to qualified immunity.

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| Defendants. | ) | |

**O R D E R**

At Wilmington this 31st day of March 2005;

IT IS ORDERED that:

1. Defendants' motion for summary judgment (D.I. 38) is granted

2. The Clerk of Court is directed to enter judgment for defendants and against plaintiff.

United States District Judge