IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MANSA A. MUNIR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 03-305-SLR
	)	
RICK KEARNEY, MIKE DELOY,	)	
VERONICA L. BURKE, and	)	
S/LT. M. HENNESSY	)	
	)	
Defendants.	)	

Mansa A. Munir, Sussex Correctional Institute, Georgetown, Delaware, Pro Se.

Ophelia M. Waters, Deputy Attorney General, State of Delaware Department of Justice, Wilmington, Delaware. Counsel for Defendants.

MEMORANDUM OPINION

Dated: April 29, 2005
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Mansa A. Munir is a Delaware prison inmate incarcerated at the Sussex Correctional Institute ("S.C.I.") in Georgetown, Delaware, and has been at all times relevant to his claim. On March 19, 2003, plaintiff filed a complaint with leave to proceed in forma pauperis, pursuant to 42 U.S.C. § 1983, against defendants Rick Kearney, Mike Deloy, Veronica L. Burke, and Staff Lieutenant M. Hennessy, alleging violations of the First, Fifth, and Fourteenth Amendments. (D.I. 2) Plaintiff seeks compensatory damages in the amount of $30 per month for each month away from employment, punitive damages in the amount of $20,000 for each defendant, and an injunction halting the defendants from interfering with the practice of plaintiff's religion. (Id.) Defendants filed motions to dismiss that were treated by this court as motions for summary judgment, as the parties referred to matters outside the pleadings; these motions were denied pending discovery. (D.I. 19, 28) A few months later, plaintiff filed a motion for summary judgment that was denied without prejudice to renew at the close of discovery. (D.I. 52, 55)

Pending before the court are plaintiff's renewed motion for partial summary judgment (D.I. 68), defendants' motion for summary judgment (D.I. 53) and plaintiff's motion for representation. (D.I. 72)

II. BACKGROUND

Offenders sentenced to a Delaware prison are evaluated based on rehabilitation needs and classified to programs "that meet the offender's designated security level and therapeutic needs." (D.I. 54, Ex. B) While at S.C.I., plaintiff was enrolled in the Transformation through Education, Motivation, and Personal Orientation Program ("TEMPO Program"), a substance abuse program. (D.I. 2) TEMPO is designed to "evoke feelings and identify behaviors that participants need to address and change." (D.I. 54, Ex. D at ¶ 2) Participation requires change through "education and self reflection." (Id.) The program has "24 topic driven groups" and is intended to be a secular program. (Id. at ¶¶ 3, 5)

Prison policy requires that all prisoners who are enrolled in a program, such as TEMPO, participate in the program. (D.I. 54, Ex. A) Any inmate who refuses to participate in the program he is enrolled in will be written-up "for Refusal to Participate in Classified Treatment Program." (Id.) Once written-up, he is referred to a disciplinary hearing officer and is no longer eligible for institutional work assignments. (Id.) On January 11, 2003, plaintiff received a disciplinary report from defendant Veronica Burke, a counselor at S.C.I., for failure to complete an assignment requiring him to think and write about the alternative

choices that he could have made prior to being incarcerated and the impact these choices may have had on his life. (D.I. 2)

Plaintiff claims that completing the assignment would be a violation of his religious beliefs.[1] (D.I. 2) Plaintiff alleges that answering the essay, "knowing the sinful nature in the sight of Allah (God), is willful and blatant disobedience to Allah." (Id.) In accordance with prison policy, plaintiff appeared before the disciplinary hearing officer, defendant Hennessy, and was found guilty. (D.I. 2) Plaintiff's request to have resident Imam Shamsidin Ali and/or the Chaplain of S.C.I. present at his hearing was denied. (Id.) Plaintiff contends that he attempted to show defendant Hennessy the passage in the Qu'ran, which justifies his reason for not completing the assignment. (Id.)

Following the disciplinary hearing, plaintiff appealed the decision to defendant Deloy, the Deputy Warden at S.C.I. (Id.) On January 22, 2003, plaintiff received a response stating that defendant Deloy concurred with the decision of defendant Hennessy. (Id.) Plaintiff alleges that defendant Deloy did not provide any information on what evidence was used to reach his decision. (Id.) Plaintiff contends that he then presented the matter to defendant Kearney, the Warden at S.C.I., and was informed that "there wasn't anything the grievance procedure

---

[1]Plaintiff contends that answering the question is an act of Shirk (associating others with Allah). (D.I. 2)

could do to address this matter. The plaintiff would have to utilize the appeal process, which couldn't address the procedure[s]." (Id.) Upon being found guilty of violating the rules of the TEMPO Program, plaintiff was transferred from minimum security to medium security and removed from his job assignment in the kitchen. (Id.)

Plaintiff asserts that "each of the defendants [know] nothing about 'Islam', should [have] consulted a resident [I]mam, or contacted a visiting Imam from Wilmington, Imam Rudolph Ali." (Id.) Plaintiff further asserts that "it is common knowledge [that] there are double standards at [S.C.I.] when it comes to muslims and blacks versus white inmates." (Id.) Plaintiff also claims that the "Rules and Regulations [at S.C.I.] are constantly changed [and] re-written, [but] never approved by Commissioner of Corrections. . . . Inmates are not provided copies of revisions, nor . . . informed [about] who made the revisions." (Id.) Finally, plaintiff alleges that defendant Hennessy based his decision of guilt on the fact that many Muslims have completed the TEMPO Program. (Id.) Plaintiff alleges that the TEMPO Program did not always include the essay portion. (Id.) Plaintiff claims the essay was incorporated because Muslim inmates were complaining about being involved with the religious aspects of the program, which included reciting the Lord's prayer at the closing of each session. (Id.)

III. MOTION FOR SUMMARY JUDGMENT

A. 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 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).

B. Discussion

1. First Amendment

The First Amendment of the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. "Prisoners have a constitutional right to free exercise of their religion." Williams v. Sweeney, 882 F. Supp. 1520, 1523 (E.D. Pa. 1995) (citing O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987)). At the same time, "prison officials must be given substantial deference in the administration of their institutions." Johnson v. Horn, 150 F.3d 276, 282 (3d Cir. 1998). Therefore, in order for a prisoner to claim that the free exercise of his religion was violated, he must show that a prison rule, regulation or practice was not reasonably related to

legitimate penelogical interests.[2] See O'Lone, 482 U.S. at 350. To determine reasonableness the Court, in Turner v. Safley, 482 U.S. 78, 89 (1987), identified four factors:

> First, there must be a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it . . . . A second factor relevant in determining the reasonableness of a prison restriction . . . is whether there are alternative means of exercising the right that remain open to prison inmates . . . . A third consideration is the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally . . . . Finally, the absence of ready alternatives is evidence of the reasonableness of a prison regulation.

Williams v. Morton, 343 F.3d 212, 217 (3d Cir. 2003) (citing Turner, 482 U.S. at 89)). The regulation will be upheld and deemed valid if it fulfills these four factors. Id.

Defendants have established the first Turner factor, as they have shown a legitimate penological interest in the TEMPO program because it reduces recidivism and substance abuse among inmates. They have an interest in the regulations enforcing programs because blanket participation is easy to enforce. See DeHart v. Horn, 227 F.3d 47, 52-53 (3d Cir. 2000) (holding that a prison has an interest in a simple efficient food service system). In addition, if defendants made exceptions to program requirements

---

[2]A prisoner will also have to show that his religious beliefs are sincere. Dehart v. Horn, 227 F.3d 47, 51 (3d Cir. 2000). As the court noted in its previous memorandum opinion, defendants have stipulated to the fact that plaintiff's beliefs are sincere. (D.I. 28)

for some inmates, other inmates would be jealous and think another is receiving special treatment. See id. (holding that the prison has an interest in "avoiding inmate jealousy").

Defendants failed to establish the second Turner factor, which requires consideration of whether plaintiff has alternative means of exercising his religious freedom. See DeHart, 227 F.3d at 53-57. This consideration is not limited strictly to the challenged prison policy or program (i.e., the TEMPO program), but requires consideration of how plaintiff can or cannot generally exercise his religious freedom. See id.; see also, e.g., O'Lone v. Estate of Shabass, 482 U.S. 342, 352 (1987). The record at bar, however, does not address whether or not plaintiff can exercise his religious beliefs outside the TEMPO program. Without such information, this court cannot determine the reasonableness of defendants' regulations or programs.

Likewise, the parties have failed to address why creating an alternative essay question, as part of the TEMPO program, would or would not accommodate plaintiff or overly burden defendants. For example, neither party provides facts with respect to the costs of administering an alternative essay question, whether such a question would accommodate plaintiff's beliefs, while not sacrificing the goals of the TEMPO program, and the impact of an alternative question on other inmates and guards. Therefore,

until the parties supplement the record in this regard, the court declines to grant or deny their motions for summary judgment.

2. Procedural Due Process

Evaluating a due process claim first requires determining whether the alleged violation implicates a constitutionally protected property or liberty interest. See Sandin v. Conner, 515 U.S. 472 (1995). Property interests arise when a plaintiff has "more than a unilateral expectation" of maintaining the interest, and instead, has "a legitimate claim of entitlement to it." Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972). "Liberty interests may arise from two sources - the Due Process Clause itself and the laws of the States." Hewitt v. Helms, 459 U.S. 460, 466 (1983). With regard to prison inmates, State created liberty interests

> will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

Sandin, 515 U.S. at 484 (internal citations omitted).

In evaluating plaintiff's liberty interest, the court is directed to look first to the nature of the sanction to determine whether it constitutes an atypical and significant hardship. If the sanction rises to such a level, the court must then review the relevant procedure to determine its sufficiency under the Due Process Clause.

Plaintiff argues that his Due Process rights were violated when the disciplinary hearing officer refused to allow another inmate to represent him, subsequently transferred him from minimum security to medium security, and removed from his job assignment in the kitchen.

The Supreme Court in Hewitt held that, "'[a]s long as the conditions or the degree of confinement to which [a] prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight.'" Id. at 468 (quoting Montanye v. Haymes, 427 U.S. 236, 242 (1976)). There is no evidence that plaintiff's reclassification from minimum security to medium security subjected him to a level of security that was outside his sentence. Nor is there evidence that terminating his job assignment was beyond his sentence. Therefore, neither of these actions was protected by the Due Process Clause.

Likewise, under Delaware law neither plaintiff's classification nor his work assignment are a protected interest. Delaware does not create a liberty or property interest for prisoners in their work assignments. See, e.g., James v. Quinlan, 866 F.2d at 629-30 (holding that prisoners do not have a property interest in job assignments created under federal law); see also Mosley v. Klein, C.A. No. 02C-05-156 SCD, 2002 Del.

Super. LEXIS 244, at *1 (Del. Super. Ct. Sept. 17, 2002), aff'd, 818 A.2d 970 (Del. 2003). Furthermore, Delaware law explicitly provides that it does not require the Department of Correction to maintain a classification system; therefore, the State has not created a protectable interest in classifications. See 11 Del. C. § 6529 (2005); Nicholson v. Snyder, No. 00-588-SLR, 2001 WL 935535, at * 5 (D. Del. Aug. 10, 2001), aff'd in part and vacated in part, 2005 U.S. App. LEXIS 2078 (3d Cir. 2005). Thus, defendants' motion for summary judgment is granted and plaintiff's motion for summary judgment is denied.

3. Equal Protection

Plaintiff alleges that Muslim and black inmates are treated differently than white inmates. Inmates are not a protected group, thus, their claims under the Equal Protection Clause are analyzed under the less strict rational relationship standard. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 317 (3d Cir. 2001). Plaintiff does not provide examples or instances of how Muslim or black inmates are treated differently, other than to allege that only Muslim inmates are subject to religious discrimination. (D.I. 73) Judging from the terms of the rules and regulations challenged by plaintiff, they are intended to apply to all inmates. Because plaintiff has not come forward with instances of when the regulations were not applied equally to all inmates,

defendants' motion for summary judgment is granted and plaintiff's motion for summary judgment is denied.

IV. PLAINTIFF'S MOTION FOR REPRESENTATION BY COUNSEL

As previously stated by this court, plaintiff has no constitutional or statutory right to representation by counsel. See Ray v. Robinson, 640 F.2d 474, 477 (3d Cir. 1981). It is within the court's discretion, however, to seek representation by counsel for plaintiff, but this effort is made only "upon a showing of special circumstances indicating the likelihood of substantial prejudice to [plaintiff] resulting . . . from [plaintiff's] probable inability without such assistance to present the facts and legal issues to the court in a complex but arguably meritorious case." Smith-Bey v. Petsock, 741 F.2d 22, 26 (3d Cir. 1984). The court still believes plaintiff is able to present his allegations and legal arguments in an organized manner. Therefore, plaintiff's motion for representation of counsel is denied without prejudice to renew.

V. CONCLUSION

For the reasons stated, defendants' motion for summary judgment is granted as to plaintiff's claims under the Fifth and Fourteenth Amendments. The parties are ordered to supplement the record, as directed, with respect to plaintiff's claims under the First Amendment. Plaintiff's motion for representation by

counsel is denied. An order consistent with this memorandum opinion shall issue.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MANSA A. MUNIR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 03-305-SLR
	)	
RICK KEARNEY, MIKE DELOY, VERONICA L. BURKE, and S/LT. M. HENNESSY	)	
	)	
Defendants.	)	

O R D E R

At Wilmington this 29th day of April, 2005, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. **On or before May 13, 2005**, the parties shall supplement the record as directed.

2. **On or before May 20, 2005**, each party may respond to the opposing party's supplement.

3. Plaintiff's motion for representation of counsel (D.I. 72) is denied without prejudice to renew.

United States District Judge