

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM MACLARY, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 03-984 JJF
 :
 WARDEN THOMAS CARROLL; DEPUTY :
 WARDEN LAWRENCE MCGUIGAN; CAPT. :
 DEAN SAGARS; JOHN DOE LIEUTENANTS; :
 SGT. WASHINGTON; SGT. RILEY; LT. :
 HARVEY; CPL. MERSON; DEPUTY WARDEN :
 E. BURRIS; and A. Rendina, :
 :
 Defendants. :

William Maclary, Smyrna, Delaware.
Pro Se Plaintiff.

Ophelia Michelle Waters, Esquire, Department of Justice,
State of Delaware, Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

February 25, 2005
Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion To Dismiss Or, In The Alternative, For Summary Judgment (D.I. 26) filed by State Defendants Warden Thomas Carroll, Deputy Warden Lawrence McGuigan, Capt. Dean Sagars, John Doe Lieutenants, Sgt. Washington, Sgt. Riley, Lt. Harvey, Cpl. Merson, Deputy Warden Burris, and A. Rendina. For the reasons discussed, State Defendants' Motion to Dismiss Or, In The Alternative, For Summary Judgment (D.I. 26) will be granted in part and denied in part.

BACKGROUND

I. Procedural History

Plaintiff William Maclary is a pro se litigant who is presently incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. Mr. Maclary filed this action pursuant to 42 U.S.C. § 1983. On October 28, 2003, Mr. Maclary filed a Complaint (D.I. 2), in which he alleged civil rights violations arising as a result of his transfer to the pre-detention/isolation unit ("ISO") for allegedly committing infractions of institutional rules and regulations. Specifically, Mr. Maclary alleges that the conditions he endured for fifteen days in the ISO "violate the most basic needs of human nature" because the unit was brightly lit in the evenings, he was not allowed to use soap except on shower days, he was not provided with a toothbrush or toothpaste, and he had to wear the

same clothing for 15 days. (D.I. 2.) Mr. Maclary seeks compensatory and punitive damages.

By Order of the Court on November 12, 2003, Mr. Maclary's application to proceed in forma pauperis was granted. (D.I. 5). On December 3, 2003, Mr. Maclary filed a Motion To Amend/Supplement his Complaint (D.I. 7), which the Court granted. In his Amended Complaint (D.I. 7), Mr. Maclary added six new defendants.

II. Factual History

On September 13, 2003, Mr. Maclary and a fellow inmate were discovered naked in Mr. Maclary's bunk. Mr. Maclary subsequently was transferred to the ISO. Mr. Maclary contends that he asked for soap, a toothbrush, and some toothpaste, which he was denied. Mr. Maclary further contends that the cell is artificially lighted for several hours in the evening and that "this practice is tantamount to psychological torture." (D.I. 2 at 4.) Further, Mr. Maclary contends that he did not receive a change of clothes or a towel and washcloth in the 15 days he spent in the isolation unit.

Mr. Maclary's Complaint alleges that after 15 days in the isolation unit, he was transferred to building 19, where conditions were similar. (D.I. 2 at 5.) On October 23, 2003, Mr. Maclary was found guilty of four offenses: 1) sexual misconduct, 2) indecent exposure, 3) creating a

health/safety/fire hazard, and 4) being "off limits," and a 15-day stay in the isolation unit was imposed as a sanction. (D.I. 26, App. E.) Mr. Maclary filed an appeal, wherein the guilty verdicts for indecent exposure and creating a health/safety/fire hazard were reversed, but no change in the sanction resulted. (D.I. 26, App. G.) Mr. Maclary contends that he filed an appeal of that second decision and did not receive a written decision to the second appeal within 10 days. (D.I. 7 at 3.)

PARTIES' CONTENTIONS

By their motion, the State Defendants contend that Mr. Maclary has failed to state a claim upon which relief can be granted. Specifically, the State Defendants argue that Mr. Maclary did not exhaust his remedies through the prison grievance procedure as required by the Prison Litigation Reform Act of 1995 ("PLRA") 42 U.S.C. § 1997e(a), and that Plaintiff's Complaint should be dismissed on this basis alone. Further, the State Defendants contend that they are immune from liability, and that Mr. Maclary has not stated any facts to suggest personal involvement in, or knowledge of, the alleged deprivation by Defendants Carroll, Burris, McGuigan, Harvey, or Riley. The State Defendants further contend that they did not deprive Mr. Maclary of and "identifiable need such as food, warmth, or exercise" in violation of the Eighth Amendment. Additionally, the State Defendants contend that the transfer of Mr. Maclary to

the ISO did not implicate his due process rights.

In response, Mr. Maclary contends that the charges against him were not true. Mr. Maclary further contends that he filed several grievances that have never been answered.

LEGAL STANDARD

Because the State Defendants have referred to matters outside the pleadings, such as the affidavit of Corporal Lise Merson, the State Defendants' motion will be treated as one for summary judgment. See Fed. R. Civ. P. 12(b)(6). A party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150-151, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). Thus, to properly consider all of the evidence, the "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence

supporting the moving party' that is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses." Id.

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to show that there is more than:

some metaphysical doubt as to the material facts.... In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial".... Where 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."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

DISCUSSION

I. Exhaustion of Administrative Remedies

The State Defendants contend that Mr. Maclary did not exhaust his administrative remedies prior to filing this action pursuant to the PLRA, 42 U.S.C. § 1997e(a). In pertinent part 42 U.S.C. § 1997e(a) states: "No action shall be brought with

respect to prison conditions unless under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies that are available are exhausted.” 42 U.S.C. § 1997e(a). The Third Circuit requires that prisoners exhaust all administrative remedies available to them before they file a claim premised on prison conditions under § 1983. Nyhuis v. Reno, 204 F.3d 65, 67 (3d Cir. 2000). Prison conditions include the physical environment in which they live and the services provided to them. Booth v. Churner, 206 F.3d 289, 291 (3d Cir. 2000), aff'd, 531 U.S. 956, 121 S.Ct. 377, 148 L. Ed. 2d 291 (2000).

The United States Supreme Court requires a plaintiff to exhaust administrative remedies even where the grievance process would not provide him with the remedy that he is seeking in his federal court action. Booth, 206 F.3d at 294-295; see also Nyhuis, 204 F.3d at 71 (holding that there is no "futility" exception to the prisoner exhaustion requirement).

The DCC had an inmate grievance procedure in place at the time of the events at issue in this lawsuit. In her Affidavit, State Defendant Corporal Merson testified that Mr. Maclary filed a grievance on October 6, 2003, but that the subject of the grievance was clothing that was missing from Mr. Maclary's personal property at the time he was removed from the ISO. (D.I.

26 at App. H.) The State Defendants allege that Mr. Maclary has not filed a grievance with respect to his claim for money damages, his claims for cruel and unusual punishment, his claims for inhumane treatment, or his claims for violation of due process rights.

Mr. Maclary has the burden of coming forward with affirmative evidence in support of his contention that he has exhausted all of his administrative remedies with respect to the claims at issue in this lawsuit. In his Answering Brief, Mr. Maclary contends that he filed several grievances that have never been answered. (D.I. 28 at 4.) Further, on the first page of his original Complaint (D.I. 2), Mr. Maclary alleges he filed a grievance after being removed from the ISO, "and it was denied being processed because 'it is not a grievable issue.'" Mr. Maclary further alleges that he "has written more than one letter to each defendant." (D.I. 2 at 1.) In his Amended Complaint, Mr. Maclary alleges that he filed a grievance on October 6, 2003, but never received a response. (D.I. 7 at 2). However, Mr. Maclary does not attach to either the Answer Brief (D.I. 28), the original Complaint (D.I. 2), or the Amended Complaint (D.I. 7) a copy of the grievance or copies of the letters he allegedly sent to Defendants.

Because Mr. Maclary has failed to proffer any evidence that he has exhausted his administrative remedies with respect to the

claims at issue in this lawsuit, the Court finds that Mr. Maclary has not offered evidence sufficient to create a genuine issue of material fact as to whether he has exhausted his administrative remedies. Prisoners must exhaust all administrative remedies available to them before they can file a claim premised on prison conditions under § 1983. Thus, the Court concludes that summary judgment is appropriate with respect to this issue and the Court will not address the other grounds argued by the State Defendants.

CONCLUSION

For the reasons discussed, the Motion To Dismiss Or, In The Alternative, For Summary Judgment (D.I. 26) filed by the State Defendants will be granted with respect to the Motion For Summary Judgment and denied with respect to the Motion To Dismiss.

An appropriate Order will be entered.

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 SGT. WASHINGTON; SGT. RILEY; LT. :
 HARVEY; CPL. MERSON; DEPUTY WARDEN :
 E. BURRIS; and A. Rendina, :
 :
 Defendants. :

ORDER

At Wilmington, this 25th day of February 2005, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that the Motion To Dismiss Or, In The Alternative, For Summary Judgment (D.I. 26) filed by the State Defendants is **GRANTED** with respect to the Motion For Summary Judgment and **DENIED** with respect to the Motion To Dismiss.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

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 :
 Defendants. :

FINAL JUDGMENT IN A CIVIL CASE

At Wilmington, this 25th day of February 2005, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that judgment is entered in favor of Defendants Warden Thomas Carroll, Deputy Warden Lawrence McGuigan, Capt. Dean Sagars, Sgt. Washington, Sgt. Riley, Lt. Harvey, Cpl. Merson, Deputy Warden E. Burris, and A. Rendina and against Plaintiff William Maclary.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Anita F. Bolton
(By) Deputy Clerk