IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WALLACE HARDEN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 98-278-JJF
	:	
SHERESE BREWINGTON-CARR, Warden, et al.,	:	
	:	
Defendants.	:	

Wallace Harden, Smyrna, Delaware.

Pro Se Plaintiff.

Robert F. Phillips, Esquire, Deputy Attorney General, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for State Defendants.

MEMORANDUM OPINION

March 20, 2001
Wilmington, Delaware.

Farnan, District Judge.

Presently before the Court is a Motion For Summary Judgment (D.I.45) filed by Defendants Sherese Brewington-Carr, Raphael Williams, Mary Cooper, Allen Pedrick, Michael McCreanor, Sharon Roach and Christopher Story ("State Defendants"). For the reasons stated below, the Court will grant State Defendants' Motion for Summary Judgment (D.I. 45).

BACKGROUND

At all times relevant to this lawsuit, Plaintiff ("Harden") was incarcerated at the Multi-Purpose Criminal Justice Facility ("MPCJF" or "Gander Hill Prison") in Wilmington, Delaware. Plaintiff filed a civil rights complaint against Warden Sherese Brewington-Carr, Deputy Warden Raphael Williams, Lieutenant Mary Cooper, Lieutenant Michael McCreanor, Sergeant Allen Pedrick, Doctor Ostrum, Correctional Officer Christopher Story, Correctional Officer Sharon Roach, Medical Director Gertrude Shipp, and Nurse Mary Ann Taylor pursuant to 42 U.S.C. § 1983 alleging: (1) he was denied necessary medical treatment; (2) he was disciplined for papering over his cell window to prevent a female officer from viewing him while using the bathroom; and (3) he was denied access to religious programs and services while on 14-day cell confinement. (D.I. 4). On October 28, 1998, the Court

allowed Plaintiff to amend his complaint by adding Prison Health Services ("PHS") as a Defendant because he had improperly named Correctional Medical Services as a Defendant. (D.I. 33). On March 31, 2000, the Court granted a Motion to Dismiss on behalf of Defendants Medical Director Shipp and Nurse Taylor. (D.I. 44). On April 14, 2000, State Defendants filed the instant Motion for Summary Judgment. To date, Plaintiff has not filed any response.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) provides that a party is entitled to summary judgment where "the pleadings depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of 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 always bears the initial responsibility of informing the Court of the basis for its motion, and identifying those portions of the materials, which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553 (1986). The moving party is not required to negate the nonmovant's claim, but is only required to point out the lack of evidence supporting the nonmovant's claim. Country Floors, Inc. v. Partnership Composed of Gepner

& Ford, 930 F.2d 1056, 1061 (3d Cir. 1991). Once the moving party meets his or her burden, the burden shifts to the nonmovant to go beyond the mere allegations or denials of the pleadings and designate "specific facts showing that there is a genuine issue for trial." Id.; Celotex, 477 U.S. at 324, 106 S. Ct. at 2553. In determining whether there is a triable dispute of material fact, the Court must construe all inferences from the underlying facts in the light most favorable to the nonmovant. See Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976) (footnote omitted), cert. denied, 429 U.S. 1038, 97 S. Ct. 732 (1977). However, the mere existence of some evidence in support of the nonmovant will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the nonmovant on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2510 (1986). Thus, if the evidence is "merely colorable, or is not significantly probative," summary judgment may be granted. Id.

DISCUSSION

I. Medical Treatment Claim

In order to establish a claim under Section 1983, a plaintiff must show: (1) the conduct complained of was committed by a person acting under color of state law and (2)

the conduct deprived the plaintiff of a federally secured right. Davidson v. Dixon, 386 F.Supp. 482, 487 (D. Del. 1974), aff'd, 529 F.2d 511 (3d Cir. 1975). In the instant action, Plaintiff's medical indifference claim is fairly read as asserting a violation of the Eighth Amendment to the United States Constitution. The Eighth Amendment protects prisoners from cruel and unusual punishment including "unnecessary and wanton infliction of pain." Hamilton v. Leavy, 117 F.3d 742, 746 (3d Cir. 1997). To establish a claim, Plaintiff must show acts or omissions harmful enough to evidence deliberate indifference to serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 104 (1976).

In this case, the Court previously dismissed Plaintiff's claims against Medical Defendants Shipp and Taylor. The Court reviewed Plaintiff's medical file (D.I. 29, Exh. C) and concluded that Plaintiff was not denied access to a medical professional. On November 2, 1997, Plaintiff submitted a sick call slip requesting treatment for a "large bump" under his arm. He was seen on November 5, 1997. Doctor Ostrum examined him and recorded Plaintiff's statement that he "popped it with a razor" two days before the examination. Doctor Ostrum observed no redness or swelling and recommended no further action, but did authorize Plaintiff to return if needed. (D.I. 29, Exh. C). The medical record does not indicate that

Plaintiff returned for treatment, nor has he alleged that he requested to be seen again for this condition and was denied.

Plaintiff also alleges in his Complaint that he was denied treatment for genital warts. The medical record, however, recounts numerous instances when Plaintiff sought and received treatment for his warts. (D.I. 29, Exh. C). Whether that treatment was the best possible is not relevant to the Court's decision. "[A]n inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.'" Estelle, 429 U.S. at 105-06.

In addition, Plaintiff has failed to provide any evidence supporting his claim of deliberate indifference on the part of State Defendants. Thus, the Court concludes that the State Defendants are entitled to summary judgment on Plaintiff's claim of inadequate medical treatment.

II. The Alleged First Amendment and Fourteenth Amendment Violations

Plaintiff alleges that on July 9, 1997, he was put on fourteen (14) days cell confinement which resulted in loss of privileges violating his First and Fourteenth Amendment Equal Protection rights. Specifically, Plaintiff alleges the disciplinary loss of privileges action precluded him from

attending religious services. (D.I. 4, at 9).

The Supreme Court of the United States has held that "convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison." Bell v. Wolfish, 441 U.S. 520, 545 (1979). The Supreme Court in Bell specifically recognized that prisoners retain the right to freedom of religion. Id. The Supreme Court, however, has also recognized that "incarceration brings about the necessary withdrawal or limitation of many privileges and rights." O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987) (quoting Price v. Johnston, 334 U.S. 266 (1948)).

In O'Lone, the Supreme Court determined that "prison regulations alleged to infringe constitutional rights are judged under a 'reasonableness' test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights." O'Lone, 482 U.S. at 348. A prison regulation is valid if it is "reasonably related to legitimate penological interests." Id.(quoting Turner v. Safely, 482 U.S. 78, 79 (1987)). The Court of Appeals for the Third Circuit has held that the First Amendment rights of an inmate "may be limited when they pose a 'likelihood of disruption to prison order or stability.'" Wilson v. Schillinger, 761 F.2d 921, 925 (3d Cir. 1985).

In this case, Correctional Officer Story noticed that Plaintiff's cell window was obstructed by paper in contravention of institutional rules on July 9, 1997. (D.I. 45, Exh. A, Affidavit of Raphael Williams). Defendant Story ordered Plaintiff to remove the paper. Id. Despite being ordered two more times by Correctional Officer Story to remove the paper, it remained obstructing the window for an additional ten minutes. Id. Plaintiff was "written up" for failure to obey an order and lying and received fourteen (14) days' confinement to his cell. Id. Plaintiff appealed the disciplinary action, but his appeal was denied. Id.

After reviewing the record in this case, the Court concludes that the prison regulation precluding inmates from obstructing cell windows is validly related to legitimate penological interests of security and order. Applying the reasonableness standard set forth by the Supreme Court in O'Lone, the Court concludes that Plaintiff's temporary suspension from religious services was not in violation of his First Amendment rights. This conclusion is further supported by the Third Circuit's decision in Wilson, because prohibiting prisoners from covering cell windows with paper promotes prison order and stability.

Thus, State Defendants are entitled to summary judgment on Plaintiff's First Amendment claim.

Plaintiff also claims that his Fourteenth Amendment Equal Protection rights were violated as a result of his fourteen day cell confinement. The Fourteenth Amendment Equal Protection Clause requires that similarly situated persons should be treated alike. Plyer v. Doe, 457 U.S. 202, 216 (1982). Thus, in order to prevail on an Equal Protection claim, Plaintiff must show that other inmates in his situation have been treated differently. See Strum v. Clark, 835 F.2d 1009, 1016 (3d Cir. 1987)(equal protection analysis requires party to show government action benefitted one and burdened another). In this case, Plaintiff has failed to provide any evidence to demonstrate that other similarly situated inmates are treated differently under the same circumstances. Thus, the Court concludes that State Defendants are entitled to summary judgment on Plaintiff's Fourteenth Amendment Equal Protection claim.

CONCLUSION

For the reasons discussed, State Defendants' Motion For Summary Judgment (D.I. 45) will be granted.

An appropriate Order will be entered.