IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Inmates of the Northumberland County Prison, through Scott Collins, *et al.*,	:	
Plaintiffs	:	CIVIL NO. 4:08-CV-00345
	:	JUDGE JOHN E. JONES, III
v.	:	
Ralph M. Reish, in his official capacity as Warden of Northumberland County Prison, *et al.*,	:	COMPLAINT FILED: 2/25/08
Defendants	:	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

AND NOW, come Defendants, Ralph M. Reish, Frank Sawicki, Vinny Clausi, Kurt Masser, Anthony Rosini, Charles Erdman, Robert Sacavage, and Chad Reiner (hereinafter "Moving Defendants"), hereby file this Motion for Summary Judgment, and in support thereof aver as follows:

1. On February 25, 2008, twelve (12) Plaintiffs filed a Complaint (Doc. 1) seeking declaratory and injunctive relief; certification of a Rule 23(b)(2) Class; an award of reasonable costs, expenses and attorneys' fees incurred in the prosecution of this litigation; and other relief that may be appropriate and necessary under the facts of the case.

2. The Complaint named Warden Reish and the members of the Northumberland County Prison Board in their official capacities as Defendants. Northumberland County, Pennsylvania was also named as a Defendant.

3. In their Complaint, Plaintiffs challenge the constitutionality of various conditions of confinement at the Northumberland County Prison ("NCP"), including access to medical care (Complaint, ¶¶ 18-31); access to mental health treatment (*Id.* at ¶¶ 32-36); fire safety (*Id.* at ¶¶ 37-56); environmental conditions (*Id.* at ¶¶ 57-70); basement cell conditions and practices (*Id.* at ¶¶ 71-81); four-point restraint practices (*Id*. at ¶¶82-90); bunk restriction practices (*Id*. at ¶¶91-96); disparate treatment of female prisoners (*Id*. at ¶¶97-104); disciplinary confinement recreation (*Id*. at ¶¶105-109); clothing (*Id*. at ¶¶110-116); and attorney visits (*Id*. at ¶¶117-123).

4. The Complaint also asserts the following legal claims:

a. Eighth and Fourteenth Amendment claims for alleged deficiencies in medical staffing, mental health staffing, dental treatment, fire risks, environmental problems, the use of the basement cells, the use of four-point restraints, the bunk confinement policy, the policy governing the exercise/recreation of segregated inmates and failure to provide underclothing.

b. First and Fourteenth Amendment claims for alleged failure to protect the privacy of written requests for medical and mental health treatment.

c. A Fourteenth Amendment/equal protection clause claim for the alleged unequal treatment of female inmates.

d. A First Amendment claim regarding the bunk confinement practice.

e. First, Sixth and Fourteenth Amendment claims for alleged failure to provide a confidential meeting room for meetings between the inmates and their counsel.

5. On March 12, 2008, Plaintiffs filed their First Motion to Certify. (Doc. 9)

6. Defendants filed a Motion to Dismiss the Complaint and Motion to Amend/Correct as to Plaintiffs Corely, Anderson, Holohan, and Wyland based upon various grounds including that these named Plaintiffs did not have standing to pursue claims on behalf of other inmates. (Docs. 33, 34)

7. On April 24, 2008, Defendants filed an Answer to the Complaint. (Doc. 35)

8. By Order dated June 11, 2008, the Court denied Plaintiffs' First Motion to Certify without prejudice. (Doc. 61)

9. Plaintiff Reichner has withdrawn from this litigation. (Doc. 63)

10. Plaintiffs filed a Second Motion to Certify Class which sought the certification of three discrete classes of NCP inmates. (Doc. 69)

11. Plaintiffs filed a Motion to Supplement and Amended Motion to Supplement which sought to supplement their Complaint with a claim that triple-celling at the Prison violated their constitutional rights. They also sought to add inmate Dale Foss as a Plaintiff. (Docs. 64, 70)

12. The proposed "global class" consisted of all current and future inmates of NCP and sought to pursue claims associated with the provision of medical, dental and mental health care; environmental conditions in the housing units; fire hazards in the living areas; confinement in the Prison's basement; the use of four-point restraints; the distribution of essential clothing to inmates and the venue in the which prisoners meet with their attorneys.

13. One proposed sub-class (the "male sub-class") consisted of all current and future male inmates of NCP and sought to challenge a policy that denies segregated (male) prisoners outdoor recreation and requires them to be handcuffed and shackled when engaging in recreation.

14. The other proposed sub-class (the "female sub-class") consisted of all current and future female inmates at NCP and challenged "the bunk-restriction policy that operates in the women's dormitory and allege discrimination in the context of the institution's work release and recreation program."

15. By Order dated March 17, 2009, the Court granted in part Plaintiffs' Motion for Class Certification, granted in part Defendants' Motion to Dismiss, and

granted Plaintiffs' Motion to Supplement and Amended Motion to Supplement in its entirety. (Doc. 102).

16. The Court dismissed Plaintiffs Corely, Anderson, and Holohan from the global and male's classes for lack of standing.

17. The substantive claims of Plaintiffs Collins, Wyland and Wetzel were deemed moot as they were no longer inmates at NCP.

18. The Court found that Plaintiffs Brady, Elsesser, Lindsay, and Bower may properly represent the male sub-class, Plaintiff Williams may properly represent the female sub-class, and all five of those Plaintiffs may represent the global class.

19. The Court concluded that the global inmates satisfied the class certification requirements with regard to all of their claims except for those involving the failures to repair the leaky roof in the women's dormitory, to remove mold from the wall in the women's dormitory, to repair breached mattresses, to issue undergarments upon institutionalization, and to provide a confidential space in which to conduct legal discussion with counsel.

20. The Court also concluded that the male inmates satisfied the class certification requirements as to all of their claims.

21. The Court granted the Plaintiffs' Motion to Certify with regard to the female sub-class and its bunk restriction and recreation claims only.

22. On March 30, 2009, Defendants filed their Amended Answer to the Complaint. (Doc. 106)

23. Defendants also filed their Answer to the Supplemental Complaint on March 30, 2009. (Doc. 107)

24. Summary judgment is appropriate "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).

25. To establish an Eighth Amendment violation for conditions of confinement, "an inmate must allege both an objective element--that the deprivation was sufficient serious--and a subjective element--that a prison official acted with a sufficiently culpable state of mind, i.e. deliberate indifference." Nami v. Fauver, 82 F.3d 63, 67 (3d Cir. 1996) see also Young v. Quinlan, 960 F.2d 351, 360-61 (3d Cir. 1992) (describing deliberate indifference as occurring when an official knows or should have known of a sufficiently serious danger to an inmate).

26. In making this evaluation, the court should consider the totality of the institution's conditions. See Nami, 82 F.3d at 67.

27. Combinations have a constitutional effect "only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise--for example, a low cell temperature

at night combined with a failure to issue blankets." Wilson v. Seiter, 501 U.S. 294, 304 (1991).

28. While the inquiry into the constitutionality of pre-trial confinement under the Fourteenth Amendment is similar to that of post-trial confinement of convicts under the Eighth Amendment, Silletti v. Ocean County Dept. of Corr., 2006 WL 2385124 *3 (D.N.J. 2006), the Third Circuit Court of Appeals has held that "pretrial detainees…are entitled to at least as much protection as convicted prisoners, so the protections of the Eighth Amendment would seem to establish a floor of sorts." Fuentes v. Wagner, 206 F.3d 335, 344 (3d. Cir. 2000) (internal quotation omitted).

29. The proper inquiry regarding a Fourteenth Amendment claim is whether any legitimate purposes are served by the conditions and whether the conditions are rationally related to those purposes. Union County Jail Inmates v. Di Buono, 713 F.2d 984, 992 (3d. Cir. 1983).

30. The Third Circuit Court of Appeals, in Beers-Capitol v. Whetzel, 256 F.3d 120 (3d Cir. 2001), stated "[i]n sum, to make out a claim of deliberate indifference based on direct liability . . ., the plaintiffs must meet the test from Farmer v. Brennan: They must show that the defendants knew or were aware of and disregarded an excessive risk to the plaintiff's health or safety, and they can show this by establishing that the risk was obvious." Beers-Capitol, 256 F.3d at 135.

31. Therefore, "to survive summary judgment, [the plaintiff] must come forward with evidence from which it can be inferred that the defendant-officials were at the time suit was filed, and are at the time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable risk of harm." Id. at 132; Farmer, 511 U.S. 825, 846 (1994).

32. To establish eligibility for an injunction, the inmate must demonstrate the continuance of the disregard during the remainder of the litigation and into the future. Farmer, 511 U.S. at 846.

33. The inmate may rely, in the district court's discretion, on developments that postdate the pleadings and pretrial motions, as the defendants may rely on such developments to establish that the inmate is not entitled to an injunction. Id.

34. A district court should approach the issuance of injunctive orders with the usual caution and may exercise its discretion if appropriate by giving prison officials time to rectify the situation before issuing an injunction. Id. at 847.

35. Eye irritation and dehydration are the kind of "routine discomforts" that the Supreme Court has held are "part of the penalty" of a prison sentence. Hudson v. McMillan, 503 U.S. 1, 8-9 (1992).

36. Allegations of heat exhaustion and "breathing problems" from "inadequate ventilation or defective air ventilation" have likewise been found to fail the first prong of the Eighth Amendment "conditions of confinement" test. Rivers v.

Horn, 2001 U.S. Dist. LEXIS 3613, 2001 WL 312236, at *3 (E.D. Pa. Mar. 29, 2001) (summary judgment granted to defendant prison officials because sneezing, coughing, choking, heat exhaustion, extreme headaches, and loss of consciousness allegedly suffered in poorly-ventilated prison housing unit were not "extreme deprivations denying the minimal civilized measures of life's necessities").

37. It is not a per se violation of the Eighth Amendment to punish infractions of prison regulations. See, e.g., Young, 960 F.2d at 364 (noting that prison officials may punish so long as they do not harm the health of prisoners).

38. So long as the punitive actions are reasonably related to a legitimate penal objective, there is no violation of the Eighth Amendment. See, e.g., Bell v. Wolfish, 441 U.S. 520, 546 (1979) (noting that "preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of . . . convicted prisoners").

39. Only if the plaintiff demonstrates that the prison officials have exaggerated their response to security issues or they have acted unreasonably, may the court intervene. See, e.g., Loe v. Wilkinson, 604 F. Supp. 130, 134 (M.D. Pa. 1984).

40. Confinement in isolation cells is "not per se violative of the Eighth Amendment." Imprisoned Citizens Union v. Shapp, 451 F. Supp. 893, 897 (E.D.

Pa. June 7, 1978) (citing United States ex rel. Tyrrell v. Speaker, 471 F.2d 1197, 1202 (3d Cir. 1973)).

41. "Failure to provide medical care to a person in custody can rise to the level of a constitutional violation under § 1983 only if that failure rises to the level of deliberate indifference to that person's serious medical needs." Groman v. Township of Manalapan, 47 F.3d 628, 636-37 (3d Cir. 1995).

42. A medical need is serious "if it is one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention;" "if unnecessary and wanton infliction of pain . . . results as a consequence of denial or delay in the provision of adequate medical care;" or "where denial or delay causes an inmate to suffer a life-long handicap or permanent loss." Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987)

43. The Third Circuit has held that fire safety conditions in prisons fell below constitutional requirements where "there is no equipment for detecting or fighting major fires, there is a high concentration of combustible materials in storage areas near the housing units, and there are no smoke exhaust fans." Tillery v. Owens, 907 F.2d 418, 424 (3d Cir. 1990).

44. A legitimate governmental purpose served by triple celling pre-trial detainees is the effective maintenance of the prison in the face of overcrowded conditions. Di Buono, 713 F.2d at 993.

45. Moving Defendants are entitled to summary judgment as to Plaintiffs' Eighth and Fourteenth Amendment claims for alleged deficiencies in medical staffing, mental health staffing, dental treatment, fire risks, environmental problems, the use of the basement cells, the use of four-point restraints, the bunk confinement policy, the policy governing the exercise/recreation of segregated inmates and triple celling.

46. There is no evidence of record that Moving Defendants were deliberately indifferent to a serious medical need of any Plaintiff as not a single inmate has obtained post-confinement treatment/examination medical care as a result of his/her confinement at the Prison.

47. The undisputed facts of record also show that there are legitimate purposes severed by the pre-trial conditions of confinement and those conditions are rationally related to the purposes.

48. PrimeCare Medical has contracted to provide mental health, medical and related health care services to the inmate population at the Prison in accordance with its February 18, 2010 Proposal (hereinafter "Medical Proposal").

49. PrimeCare Medical currently manages thirty-one (31) correctional facilities in twenty-six (26) of the sixty-seven (67) Pennsylvania Counties.

50. Mental health services are provided by PrimeCare Medical mental health professionals, psychologists, and psychiatrists, and may include telemedicine psychiatric services if medically necessary.

51. Part of the initial medical assessment includes a dental screening and the contracted dentist will be available on-call twenty-four (24) hours per day, seven (7) days per week for emergency situations.

52. During the summer months, the Prison uses fans, provides water to the inmates, provides ice to the inmates, and permits extra showers to the inmates to help them keep cool.

53. There are large fans that circulate air in the housing units in the Prison.

54. There is an inlet fan and outlet fan for each wing of the Prison, and all four fans are operational.

55. A new boiler was bought for the Prison in 2008.

56. The boiler heats the radiators and the water in the Prison and is serviced once every year at a minimum.

57. During Warden Reish's administration, inmates would be handcuffed in the maximum security cells only if they were a danger to themselves, other inmates, or the staff.

58. During Warden Reish's administration, inmates housed in the maximum security cells would be provided blankets and mattresses unless they had been destroying the same.

59. During Warden Reish's administration, inmates confined in disciplinary segregation would spend at least 1 hour out of their cells, 5 days a week for recreation, showers, telephone privileges, going to school and receiving visits.

60. Warden Reish voluntarily retired as Warden and the position was filled by Warden Roy Johnson.

61. Warden Johnson started his employment at the Prison in the beginning of August 2009.

62. Warden Johnson was not aware of the specifics of the claims challenged by the Plaintiffs in the Complaint prior to December 1, 2009.

63. There has only been one individual who has been placed in four-point restraints during the Johnson administration.

64. The Prison is currently using the restraint chair in lieu of the four-point restraint.

65. Inmates placed in the restraint chair are only in there for a limited period of time to achieve control and safety and there is no evidence to the contrary.

66. Warden Johnson changed the practice of recreation for inmates placed in disciplinary segregation by classifying those inmates into two groups, violent and

non-violent inmates, and the non-violent inmates are not handcuffed or shackled during their recreation time.

67. Warden Johnson has instituted a good-time practice with regard to inmates who have received disciplinary sentences whereby those sentences can be reduced if the inmate exhibits compliance with the rules and regulations of the Prison.

68. The only time that inmates in the maximum security cells are handcuffed and/or shackled under Warden Johnson's tenure is when they are a threat to themselves or others.

69. There have not been any inmates housed in the maximum security cells since Warden Johnson began his employment who did not have a blanket.

70. There have been only forty-four (44) individuals that have been placed in a maximum security cell from September 1, 2009, until April 5, 2010, a period of approximately seven (7) months.

71. Since the PrimeCare contract took affect April 1, 2010, PrimeCare staff sees each individual newly committed to a maximum security cell on first and second shift ASAP which usually means within 30 minutes.

72. A female inmate placed on bunk restriction is eligible to have her sentence reduced pursuant to Warden Johnson's good-time policy, which is equally available to male inmates placed in disciplinary segregation.

73. Since Warden Johnson started, male inmates placed in disciplinary segregation and female inmates sentenced to bunk restriction receive one hour of recreation a day for five days a week. Those inmates also receive 3 showers per week.

74. Female inmates on bunk restriction are not handcuffed and shackled during their recreation time.

75. Ehrlich, an insect control company, comes into the Prison once a month and sprays chemicals to kill any insects.

76. At the time of the 2010 DOC inspection, the in-house population at the Prison was 214, which is 32 less than the approved bed capacity.

77. The Prison's fire extinguishers are inspected on a daily basis.

78. The Prison's fire exits are inspected on a daily basis.

79. The Prison has conducted at least three (3) fire drills per years beginning in 2008.

80. An outside professional fire protection company, Cintas Fire Protection, conducts and has conducted yearly inspections of the Prison's fire extinguishers and yearly checks of the Ansul system used in the kitchen as documented and confirmed on Cintas Fire Protection invoices.

81. Beginning December, 2009, all shifts participate in fire evacuation movement drills three times per month basis.

82. All of the Prison's mattresses are made from fire retardant material including the ticking (fire retardant).

83. Emergency lighting is checked monthly by Prison supervisors.

84. According to the 2010 DOC report, the Prison has an approved bed capacity of 246 with an additional 16 emergency beds. The definition of approved bed capacity is "sleeping surface and mattress that allows the inmate to be at least 12 inches off the floor plus be located in areas approved for residence occupancy by PA L & I and/or local codes authority."

85. There has been no triple celling for any amount of time in a cell behind the wire (disciplinary segregation) since approximately February, 2010 and the Prison has not used any cots in any cell since that time.

86. When government laws or policies have been challenged, the United States Supreme Court has held almost uniformly that cessation of the challenged behavior moots the suit. Lewis v. Cont'l Bank Corp, 494 U.S. 472, 474 (1990); Princeton Univ. v. Schmid, 455 U.S. 100, 103 (1982) (per curiam); Kremens v. Cent. Baptist Church, Inc., 404 U.S. 412 (1972).

87. Jurisdiction may abate if the case becomes moot because: (1) it can be said with assurance that there is no reasonable expectation…" that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably

eradicated the effects of the alleged violation. DeJohn v. Temple Univ., 537 F.3d 301, 309 (3d Cir. 2008) (internal citations omitted)

88. A plaintiff's claim for injunctive and declaratory relief challenging a policy that has been superseded and replaced renders such a claim moot. Marcavage v. West Chester Univ., 2007 U.S. Dist. LEXIS 18162 (E.D.Pa. March 15, 2007)

89. An assertion of mootness will be rejected "only when there is a substantial likelihood that the offending policy will be reinstated if the suit is terminated." City of Mesquite v. Alladin's Castle, 455 U.S. 283, 289 (1982)

90. Plaintiffs' claims challenging practices and polices at the Prison have been rendered moot because Warden Johnson, the chief policymaker for the Prison, has replaced Warden Reish and there is no likelihood that Warden Reish will return. Warden Johnson's policies and practices do not violate the constitutional rights of Plaintiffs as alleged.

91. Warden Johnson has implemented and/or modified policies including the maximum security cells, good-time for inmates placed in disciplinary segregation, the restraint chair, female bunk restriction and recreation time for inmates placed in segregation; none of these policies, either alone or in combination, violate Plaintiffs' Eighth and/or Fourteenth Amendment rights.

92. Plaintiffs' claims challenging the medical treatment at the Prison have been rendered moot because Defendants have entered into a five (5) year contract

with PrimeCare Medical for it to be the sole provider of medical services at the Prison.

93. Plaintiffs' First and Fourteenth Amendment claim for alleged failure to protect the privacy of written requests for medical and mental health treatment is rendered moot as there are medical request boxes in each housing unit to which PrimeCare employees only have access.

94. The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

95. In order to establish an equal protection claim, plaintiff must show that: (1) the person, compared with others similarly situated, was selectively treated, and (2) the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations, such as race or religion, to punish or inhibit the exercise of constitutional rights, or by a malicious or bad faith intent to injure the person. See Zahra v. Town of Southold, 48 F.3d 674, 683 (2d Cir. 1995).

96. Essentially, to demonstrate an equal protection violation, an inmate has the burden of proving under the second prong the existence of purposeful discrimination. Hernandez v. New York, 500 U.S. 352 (1991); McCleskey v. Kemp, 481 U.S. 279 (1987).

97. Official action does not violate the Equal Protection Clause solely because it results in a disproportionate impact; proof of discriminatory intent or purpose is required to show a violation. Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265 (1977); Washington v. Davis, 426 U.S. 229, 239 (1977); Stehney v. Perry, 101 F.3d 925, 938 (3d Cir. 1996).

98. Moving Defendants are entitled to summary judgment as to Plaintiffs' Fourteenth Amendment Equal Protection Clause claim for the alleged unequal treatment of female inmates because females are not selectively treated and there is no tangible evidence that any Defendant acted with discriminatory intent or purpose.

99. Female inmates placed on bunk restriction are treated the same as male inmates placed in disciplinary segregation.

100. Male and female inmates receive the same amount of recreation time.

101. Female inmates placed on bunk restriction and male inmates placed in disciplinary segregation are treated the same way during their recreation time.

102. Female inmates do not have First Amendment rights which are violated when they are placed on bunk restriction.

103. Moving Defendant Reish is entitled to summary judgment because any claims asserted against him are moot as he is no longer Warden of the Prison.

WHEREFORE, Defendants, respectfully request that this Honorable Court grant their Motion for Summary Judgment and enter the Order attached hereto.

Respectfully submitted,

Lavery, Faherty, Young & Patterson, P.C.

By: s/ Robert G. Hanna, Jr.

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DATE: April 30, 2010

CERTIFICATE OF SERVICE

I, Cathleen A. Kohr, an employee with the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 30th day of April, 2010, I served a true and correct copy of the foregoing Defendants' Motion for Summary Judgment, via U.S. Middle District Court's Electronic Case Filing System, addressed as follows:

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This document has also been electronically filed and is available for viewing and downloading from the ECF system.