2001 WL 34647163
Only the Westlaw citation is currently available.
United States District Court,
D. Maryland.

Melvin S. MULDROW, Sr. Plaintiff
v.
Parris N. GLENDENING, et al., Defendants

No. Civ.A.PJM–00–2416. | July 19, 2001. | Order Denying Motion for Reconsideration August 13, 2001.

Opinion

MEMORANDUM

MESSITTE, J.

***1** This action was filed on August 10, 2000 by Melvin Muldrow, a pre-trial detainee in the Baltimore City Detention Center, ("BCDC"). Plaintiff recites a litany of complaints about conditions at BCDC, including: being locked in his cell for approximately 22 hours per day; poor sanitation; meals being served in housing areas; excessive charges for phone calls; denial of visits for those on segregation; and lack of religious services. He argues these conditions violate his constitutional rights as well as the consent decree in *Duvall v. Schaefer,* Civil Action No. JFM–94–2541 (formerly Civil Action No. K–76–1255). He is seeking injunctive relief as well as damages. (Papers Nos. 1 and 29).

Currently pending is a Motion to Dismiss or in the alternative Motion for Summary Judgment filed by Defendants. (Paper No. 26). Plaintiff opposes the motion. (Papers Nos. 28, 30, 31).

Enforcement of the *Duvall* decree was suspended on October 31, 1997. Thus, Plaintiff's claims must be evaluated under constitutional standards.

Because Plaintiff is a pre-trial detainee, Plaintiff's complaints about the conditions of his confinement must be evaluated under the Fourteenth Amendment, not the Eighth Amendment's prohibition on cruel and unusual punishment. Under the Fourteenth Amendment the analysis is "whether those conditions amount to punishment." *Bell v. Wolfish,* 441 U.S. 520, 535 (1979). "To establish that a particular condition or restriction of his confinement is constitutionally impermissible 'punishment,' the pretrial detainee must show either that it was (1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate non-punitive governmental objective, in which case an intent to punish may be inferred." *Hause v. Vaught,* 993 F.2d 1079, 1085 (4th Cir.1993), *cert. denied,* 510 U.S. 1049 (1994).

Plaintiff's complaints about being locked in his cell and food being served in housing areas relate to the implementation of the "tier concept." This is a practice which limits mass movements of prisoners and the number of prisoners who are out of their cells at a given time. According to Defendants it is a security measure which was adopted to "combat inmate violence." (Paper No. 26, Affidavit of John Price, ¶ 3). Plaintiff argues it is simply a pretext to strip prisoners of their liberties. (Paper No. 29 at 3).

In the fall of 1998 BCDC began a violence reduction program which included implementation of the tier concept as well as other measures such as more frequent searches and better data collection and analysis. (Paper No. 26, Ex. B at 3). Since implementation of the program inmate assaults have dropped by approximately 66%. (*Id* .).

The tier concept is clearly reasonably related to a legitimate governmental interest, i.e., the reduction of violence. Although Plaintiff contends that being locked in his cell causes "overwhelming" psychological effects, his medical records show that he has sought treatment only for pre-existing depression and substance abuse. (Paper no. 26, Ex. C at 36–43). The records reveal no complaints relating to food. Under these circumstances, the tier concept and its inherent limitations, do not violate Plaintiff's constitutional rights.

***2** Plaintiff next complains of poor sanitation. Although he asserts BCDC is a "harbor place" to various rodents and insects, he does not allege that he has suffered any ill effects from the lack of sanitation. Nor do his medical records reveal any such complaints. Defendants have submitted an affidavit from Assistant Warden John Price stating that BCDC has a pest control program and that the Men's Detention Center is treated weekly by exterminators. (Paper No. 26, Affidavit of John Price, ¶ 12). Under these circumstances, Plaintiff's bald assertion that BCDC is unsanitary does not rise to the level of a constitutional violation.

Next, Plaintiff complains detainees only have access to phones to make collect calls and that the fees charged are excessive. To the extent Plaintiff is asserting a First Amendment claim of right of access to the courts, his claim fails because he does not allege that he has been "hindered [in] his efforts to pursue a legal claim ." *Lewis v. Casey,* 518 U.S. 343, 351 (1996). To the extent Plaintiff

is complaining about the rates charged persons who accept collect calls from detainees, he lacks standing to assert a claim on their behalf. *See Inmates v. Owens,* 561 F.2d 560, 562–63 (4th Cir.1977).

Plaintiff complains that persons on segregation are not allowed visits. Under BCDC policy, prisoners who are on administrative segregation are allowed non-legal visits while those who are on punitive segregation are not. (Paper No. 26, Ex. E). The Constitution does not prohibit the punishment of pre-trial detainees who violate prison rules.

Finally, Plaintiff complains about a lack of access to religious services. He does not provide his religious preference, nor any explanation of the requirements of his faith. Defendants have submitted schedules of religious services showing that various Protestant services are offered to each section of BCDC at least once per week, Catholic Mass weekly for women and available for male detainees upon request, Islamic services three time per week, as well as Protestant Bible studies several time per week. (Paper No. 26, Ex. A). Plaintiff has responded with an affidavit stating that on a single occasion, i.e., February 15, 2001, religious services were cancelled for one housing area for security reasons. (Paper No. 31).

Under *Turner v. Safley,* 482 U.S. 78, 89 (1987), an action by prison officials that infringes upon a prisoner's First Amendment rights is valid if it is reasonably related to legitimate penological interests. Additional factors to be used in applying the reasonableness standard when reviewing prisoner's constitutional claims are: (1) whether there are alternative means of exercising the right in question that remain available to prisoners; (2) the impact accommodation of the asserted constitutional right would have on guards and other inmates and on the allocation of prison resources; and (3) although the regulation need not satisfy a least restrictive alternative test, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable. *Id.* A prison need only make "reasonable efforts" to accommodate an inmate's opportunity to practice his faith. *See Alston v. DeBruyn,* 13 F.3d 1036, 1039 (7th Cir.1994). It is the plaintiff who bears the burden of showing that an item is necessary to the practice of his faith. *Blue v. Jabe,* 996 F.Supp. 499, 502 (E.D.Va.1996).

***3** As is discussed *supra,* implementation of the tier concept which limits detainees out of cell time, and also their freedom to attend religious services, is reasonably related to a legitimate governmental interest. BCDC has clearly made reasonable efforts to make religious services available to detainees. Finally, Plaintiff does not argue that his ability to practice his faith has been in any way impeded by the alleged lack of religious services. Under these circumstances, no constitutional violation has occurred.

Accordingly, a separate Order will be entered granting Defendants' Motion for Summary Judgment.

ORDER

For the reasons stated in the foregoing Memorandum, it is, this *18* day of *July* 2001, hereby ORDERED that:

1. Plaintiff's Motion for Default Judgment, (Paper No. 23), is Denied;

2. Defendants' Motion to Dismiss or in the alternative Motion for Summary Judgment, (Paper No. 26), is Granted;

3. Judgment is entered on behalf of Parris Glendening, Stewart O. Simms, Richard A. Lanham, Sr., Ralph Logan, Major Fernandez, S. Foster and L. Briscoe and against Melvin S. Muldrow;

4. The Clerk is directed to mail copies of this Order and the foregoing Memorandum to Plaintiff and Counsel for Defendants; and

5. The Clerk is directed to close this file.

ORDER ON MOTION FOR RECONSIDERATION

Currently pending is a request by Plaintiff that this Court reconsider its July 18, 2001, Order granting a motion for summary judgment by Defendants. A motion to alter or amend a judgment may be granted:

> (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.

EEOC v. Lockheed Martin Corp., 116 F.3d 110, 112 (4th Cir.1997) (citing *Hutchinson v. Stanton,* 994 F.2d 1076, 1081 (4th Cir.1993)). None of these circumstances exist in the present case.

Accordingly, it is, this *10* day of *Aug* 2001, hereby ORDERED that:

1. Plaintiff's Motion to Vacate Judgment, (Paper No. 36), is Denied; and

2. The Clerk is directed to mail copies of this Order to Plaintiff and all Counsel of Record.