

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

WILLIAM H. MALACHI,)	
)	
Plaintiff,)	
)	C.A. No. 08C-03-038 CLS
v.)	
)	
DANIEL SOSA, STEPHEN J.)	
BRUCKNER, RAPHAEL)	
WILLIAMS, PERRY PHELPS,)	
MARK EMIG, JASON)	
McCREARY, DAVID)	
WILLIAMS, HOWARD R.)	
YOUNG CORRECTIONAL)	
INSTITUTION, STATE OF)	
DELAWARE, DEPARTMENT OF)	
CORRECTIONS, STATE OF)	
DELAWARE)	
)	
Defendants.)	

Date Submitted: January 21, 2014

Date Decided: March 18, 2014

On Individual State Defendants' Motion for Summary Judgment. **GRANTED.**

ORDER

Beverly L. Bove, Esq., Vincent J. X. Hendrix, II, Esq., 1020 West 18th Street, P.O. Box 1607, Wilmington, DE 19899. Attorneys for Plaintiff.

Ralph K. Durstein, Esq., Carvel State Building, 820 N. French Street, Wilmington, DE 19801. Attorney for Individual State Defendants.

Scott, J.

Introduction

Before the Court is the Individual State Defendants', Raphael Williams, Perry Phelps, Mark Emig, Jason McCreary, and David Williams ("Defendants"), motion for summary judgment brought pursuant to Super. Ct. Civ. R. 56. The Court has reviewed the parties' submissions. For the following reasons, Defendants' Motion for Summary Judgment is **GRANTED**.

Background

The following facts are undisputed. On or about February 21, 2007, Defendants Sosa and Bruckner were guards assigned to Plaintiff William H. Malachi's ("Plaintiff") dorm at Howard R. Young Correctional Institution ("HRYCI"). During Code Red, Plaintiff asked Defendant Bruckner ("Bruckner") to use the bathroom. Plaintiff also asked Defendant Sosa ("Sosa") to use the bathroom. Sosa laughed and Plaintiff returned to his bunk until Code Green was called and he went to the bathroom. After using the bathroom, Sosa called Plaintiff to walk toward him and Plaintiff complied. Sosa told Plaintiff to raise his hands and Plaintiff refused. A heated confrontation took place between Sosa and Plaintiff and Sosa struck Plaintiff in his jaw. About thirty minutes later, Defendant Bruckner called "Code 1."¹

¹ "Code 1" signifies an assault on a staff member.

Sosa and Bruckner wrote reports on the incident. Sosa wrote a report that did not accurately describe the incident. In his report, Bruckner cut and pasted the text of Sosa's report. Bruckner was subsequently terminated based on the misconduct involving the incident report.

Plaintiff filed a seven-count complaint containing various allegations against the defendants in this case.² The claims remaining against Defendants are all claims arising out of the Federal Constitution in Counts III and IV of Plaintiff's complaint.³ In Count III, Plaintiff alleged that various acts and omissions of the Defendants created a danger to Plaintiff which resulted in the deprivation of rights secured by the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. In Count IV, Plaintiff alleged that the actions of the Defendants amounted to excessive force and an unreasonable seizure in violation of rights secured by the Fourth and Fourteenth Amendments to the U.S. Constitution.⁴

Defendants move for summary judgment in their favor, arguing that any surviving federal constitutional claims are barred as a matter of law by the dismissal of all Title 42 claims because Section 1983 displaces implied causes of

² Third Amended Complaint.

³ The claims against the HRYCI, the State of Delaware Department of Corrections, a division of the State of Delaware, and the State of Delaware were dismissed on the basis of sovereign immunity and a default judgment was entered in favor of Defendant Sosa in July 2008. *See* Opinion and Order dated May 25, 2011. Summary judgment was granted against Defendant Bruckner. *See* Opinion and Order dated January 2, 2013.

⁴ Count VII also remains but need not be addressed because it states the damages suffered by Plaintiff and the relief sought.

action grounded directly in the Constitution; and in the alternative, that even if existing independently, Plaintiff's federal constitutional claims must still be dismissed because they are based on the same factual claims that Plaintiff asserted in his state constitutional claims, which were dismissed by this Court due to a lack of factual support.

In response, Plaintiff requests that Defendants' motion for summary judgment be denied as a matter of law because Defendants fail to cite any direct cases to support their arguments and issues of fact that must be resolved by the jury still remain.

Standard of Review

Summary judgment is to be granted when "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."⁵ When considering a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party.⁶ Where there is a material fact in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law, summary judgment is inappropriate.⁷ If a motion for

⁵ Super. Ct. Civ. R. 56; *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

⁶ *Bailey v. City of Wilmington*, 766 A.2d 477, 479 (Del. 2001).

⁷ *Tew v. Sun Oil Co.*, 407 A.2d 240,242 (Del. Super. 1979).

summary judgment is properly supported, the burden shifts to the non-moving party to show that there are material issues of fact.⁸ The non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts.”⁹

Discussion

I. Plaintiff Fails to Present Facts Showing a Violation of his Fifth, Eighth, and Fourteenth Rights Under the U.S. Constitution.

Plaintiff’s federal constitutional claims under the Due Process Clause and the Eighth Amendment fail because the Court previously ruled that the facts are insufficient to support claims under Article I, Sections 7 and 11 of the Delaware Constitution, which are substantively the same as the Due Process Clause and the Eighth Amendment of the U.S. Constitution.

The Due Process Clause of the Fourteenth Amendment provides that that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.”¹⁰ Section 7 of the Delaware Constitution is substantively the same as the Due Process Clause of the U.S. Constitution as it also prohibits the deprivation of one’s life, liberty or property without “the judgment of his or her

⁸ *State v. Regency Group, Inc.*, 598 A.2d 1123, 1129 (Del. Super. 1991).

⁹ *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

¹⁰ See U.S. Const. art. amend. XIV. The Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution are substantively the same, except the Fifth Amendment is applicable only to the Federal Government. See U.S. Const. art. amend. V.

peers or by the law of the land.”¹¹ “The Due Process Clause of the Fourteenth Amendment [is] intended to prevent government ‘from abusing [its] power, or employing [its power] as an instrument of oppression.’”¹² While the Clause “forbids the State itself to deprive individuals of life, liberty, or property without ‘due process of law,’ [its] language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means.”¹³ Thus, absent an abuse of governmental power or the use of such power as an instrument of oppression, “the Fourteenth Amendment does not require a remedy when there has been no ‘deprivation’ of a protected interest.”¹⁴

Particularly in the custodial context, “the ‘process’ that the Constitution guarantees in connection with any deprivation of liberty thus includes a continuing obligation to satisfy certain minimal custodial standards.”¹⁵ “The protections of the Due Process Clause, whether procedural or substantive, are just not triggered by lack of due care by prison officials.”¹⁶ Thus, negligent conduct by a state

¹¹ Del. Const. art. I, § 7. See *Helman v. State*, 784 A.2d 1058, 1070 (Del. 2001).

¹² *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 196 (1989).

¹³ *Id.* See also *Collins v. City of Parker Heights*, 503 U.S. 115, 126-67 (1992) (“nor does history support such an expansive reading of the constitutional text”).

¹⁴ *Davidson v. Cannon*, 474 U.S. 344, 348-49 (1986).

¹⁵ *Collins*, 502 U.S. at 127-28.

¹⁶ *Davidson*, 474 U.S. at 348 (“although prison officials' lack of due care led to serious injury, that lack of care did not approach the sort of abusive government conduct that the due process clause was designed to prevent”).

official, even though causing injury, does not constitute a deprivation under the Due Process Clause.”¹⁷

Plaintiff has failed to present facts which show that Defendants violated his Due Process rights secured under the Fourteenth Amendment. In order for Plaintiff’s federal Due Process claim to survive, Plaintiff must show that the Defendants’ conduct deprived him of his liberty interest, which in a custodial context, requires a showing that Defendants failed to maintain the minimum custodial standards. Plaintiff fails to make this showing because there is nothing in the record demonstrating that the Defendants’ conduct constituted a failure to satisfy minimal custodial standards.

Plaintiff’s allegation that Defendants’ failure to supervise or intercede in the confrontation led to his injuries does not show a failure to satisfy minimal custodial standards. The facts, at most, suggest a lack of due care or negligent conduct, which, does not constitute a “deprivation” or trigger a violation of the Due Process clause.¹⁸

Moreover, Plaintiff has presented no additional facts in support of his federal Due Process claim, but instead asserted the same facts that were used to support his Due Process claim under the Delaware Constitution. Since the Due Process Clause of the Delaware Constitution is substantively the same as the Due Process Clause

¹⁷ *DeShaney*, 489 U.S. at 200.

¹⁸ *See Id.*

of the U.S. Constitution, Plaintiff fails to make a showing of a genuine issue of material fact and therefore, Plaintiff's Due Process claim must be dismissed.

Plaintiff has also failed to present facts which show that Defendants violated his rights secured under the Eighth Amendment. Plaintiff asserted the same factual allegations to support his failure to protect claim brought under both the Delaware Constitution and the U.S. Constitution. Acknowledging that the language of the Eighth Amendment "mirrors" that of Section 11 of the Delaware Constitution, this Court has already determined under Plaintiff's Section 11 claim, that there are no genuine issues of material fact as to whether Defendants were personally involved, liable as supervisors, or failed to protect.

Conduct which violates the ban on cruel and unusual punishment requires a culpable state of mind accompanied by conduct that is more than ordinary lack of due care for the prisoner's interest or safety.¹⁹

In order for liability to attach to an individual government defendant, he or she must be personally involved in the civil rights violation.²⁰ Personal involvement can be established through allegations that a defendant directed, had actual knowledge of, or acquiesced in, the deprivation of a plaintiff's constitutional rights.²¹ Thus, a supervisor may be liable only when "the supervisor implemented

¹⁹ See *Ringgold v. Lamby*, 565 F. Supp. 2d 549, 553 (D. Del. 2008).

²⁰ *Ali v. Kasprenski*, 732 F. Supp. 2d 439, 444 (D. Del. 2010).

²¹ *Id.*

deficient policies and was deliberately indifferent to the resulting risk or the supervisor's actions or inactions were the 'moving force' behind the harm suffered by the plaintiff."²²

An additional way for liability to attach is for failure to protect. A claim for failure to protect requires a showing that "(1)[the plaintiff] is incarcerated under conditions posing a substantial risk of serious harm (the objective element); and (2) prison officials acted with deliberate indifference, i.e., that prison official knew of and disregarded an excessive risk to inmate health or safety (the subjective element)";²³ and causation.²⁴

Plaintiff's Eighth Amendment claim fails because Plaintiff has not asserted any additional facts to support his claim. Specifically, Plaintiff has presented no additional facts showing that Defendants directed, had actual knowledge of, or acquiesced in, the alleged deprivation of Plaintiff's constitutional rights. There are also no facts in the record which show that Defendants, as supervisors, implemented deficient policies, with deliberate indifference to the resulting risk or that the Defendant's actions or inactions were the "moving force" behind the harm suffered by Plaintiff.

²² *Id.*

²³ *Jones v. Taylor*, 534 F. Supp. 2d 475, 480 (D. Del. 2008).

²⁴ *Davis v. Williams*, 354 Fed. Appx. 603 (3d Cir. 2009).

Furthermore, there are no facts on the record which show that Sosa was a risk to the Plaintiff, that the Defendants were aware of such risk, and that the Defendants acted with deliberate indifference. Plaintiff stated that he had never meet Sosa or Bruckner and acknowledged that he had no prior history with either of them. There are no facts which show that Defendants were aware of any risks between Sosa and Bruckner and the Plaintiff or had any reason to anticipate a risk or the actual assault. There are also no facts to show that Defendants were deliberately indifferent to any risk or the resulting incident. Instead, the facts show that upon learning of the incident, Defendants took action to protect the Plaintiff by sending him to the hospital, investigating the incident and disciplining the responsible parties.

Therefore, there exists no genuine issue of material fact and Plaintiff's Eighth Amendment claim must also be dismissed.

II. Plaintiff Does Not Have a Viable Fourth Amendment Claim.

Plaintiff's allegation that the Defendants actions amounted to excessive force in violation of the Fourth Amendment fails because it is the Eighth Amendment, not the Fourth Amendment that is implicated in excessive force claims by a convicted prisoner.²⁵ After conviction, it is the Eighth Amendment

²⁵ See e.g., *Graham v. Connor*, 490 U.S. 386, 395 (1989) (claims that law enforcement officers have used excessive force in the course of an arrest, investigatory stop, or other "seizure" of a *free citizen* are analyzed under the Fourth Amendment and its "reasonableness" standard); *Bell v.*

that “serves as the primary source of substantive protection . . . in cases . . . where the deliberate use of force is challenged as excessive and unjustified.”²⁶

Plaintiff further argues that the Defendants deprived him of his right “to be secure in his person against an unreasonable seizure” as guaranteed by the Fourth Amendment. Although Plaintiff characterizes Defendants’ conduct as an unreasonable seizure under the Fourth Amendment, “this claim is clearly one alleging an excessive use of physical force by prison officials under the Eighth Amendment.”²⁷

Thus, Plaintiff’s excessive force and unreasonable seizure claims fail because they are more properly asserted under the Eighth Amendment. As stated, Plaintiff presented insufficient facts to show that Defendants conduct violated his rights secured by the Eighth Amendment.

Wolfish, 441 U.S. 520, 535–39 (1979) (the Due Process Clause of the Fourteenth Amendment protects a *pretrial detainee* from the use of excessive force that amounts to punishment); *Whitley v. Albers*, 475 U.S. 312, 318–19 (1986) (the Cruel and Unusual Punishments Clause of the Eighth Amendment protects *inmates* against the application of excessive force by correctional officers); *Dennis v. Thurman*, 959 F. Supp. 1253, 1257 n.1 (C.D. Cal. 1997) (since the plaintiff was not a pre-trial detainee at the time, he cannot assert a Fourth Amendment claim, rather, it is the Eighth Amendment that is implicated in excessive force claims by a *convicted prisoner*).

²⁶ *Graham*, 490 U.S. 386, 395 n.10.

²⁷ *Boyett v. Cnty. of Washington*, 2006 WL 1129394 at *4 (D. Utah Apr. 26, 2006) *aff’d*, 282 F. App’x 667 (10th Cir. 2008).

Conclusion

Based on the aforementioned reasons, Defendants' Motion for Summary Judgment **GRANTED**.²⁸

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.

²⁸ Given the Court's findings that Plaintiff's federal constitutional claims fail, the Court will not address whether the dismissal of Plaintiff's Section 1983 claim is dispositive of Plaintiff's Fourth, Fifth, Eighth, and Fourteenth Amendment claims under the U.S. Constitution.