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CIVIL DIVISION
Case No. 22-CV-00253

Serendipity Morales v Thomas Donovan, Jr. et al

DECISION ON MOTION FOR SUMMARY JUDGMENT

Petitioner Serendipity Morales filed what they characterized as a petition for habeas corpus. On closer review, the court determined that the case was more properly viewed as a Rule 75 challenge to various actions taken by the Department of Corrections and its employees (“DOC”).¹ To say that the nature of Petitioner’s claims has been a moving target is a gross understatement; by their own most recent count, Petitioner has sought to amend the complaint no fewer than 23 times. Petitioner has filed over 100 motions, most unfounded. Nevertheless, the court has waded through this morass and refined the claims to three. *See* Entry Order Regarding Motions 80, 82, 83, 86–91, 93–95 (filed December 30, 2022) (providing a full recap of this matter’s procedural history). The issues that remain are: (1) a challenge to Petitioner’s DR segregation related to events that occurred in November and December of 2021; (2) a challenge to the subsequent administrative segregation related to that DR conviction; and (3) a challenge asserting that DOC limited Petitioner’s access to legal materials necessary to present their case. DOC moves for summary judgment on these claims. The court grants the motion.

Background

The standards on a motion for summary judgment are so familiar as to be almost trite. Here, however, application of those standards drives the outcome on this motion. Thus, at the risk of belaboring the obvious, the court recites the standards below.

Under Rule 56, the initial burden falls on the moving party to show an absence of dispute of material fact. *E.g.*, *Couture v. Trainer*, 2017 VT 73, ¶ 9, 205 Vt. 319 (citing V.R.C.P. 56(a)). When the moving party has made that showing, the burden shifts to the non-moving party; that party may not rest on mere allegations, but must come forward with evidence that raises a dispute as to the facts in issue. *E.g.*, *Clayton v. Unsworth*, 2010 VT 84, ¶ 16, 188 Vt. 432 (citing *Alpstetten Ass’n, Inc. v. Kelly*, 137

¹ The petition names multiple Respondents. For the sake of simplicity and brevity, the court refers to all Respondents, individually and collectively, as “DOC.”

Vt. 508, 514 (1979)). Where that party bears the burden of proof on an issue, if fairly challenged by the motion papers, it must come forward with evidence sufficient to meet its burden of proof on that issue. *E.g., Burgess v. Lamoille Housing P'Ship*, 2016 VT 31, ¶ 17, 201 Vt. 450 (citing *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989)). The evidence, on either side, must be admissible. *See* V.R.C.P. 56(c)(6); *Gross v. Turner*, 2018 VT 80, ¶ 8, 208 Vt. 112 (“Once a claim is challenged by a properly supported motion for summary judgment, the nonmoving party may not rest upon the allegations in the pleadings, but must come forward with admissible evidence to raise a dispute regarding the facts.”). The court must give the non-moving party the benefit of all reasonable doubts and inferences. *Carr v. Peerless Ins. Co.*, 168 Vt. 465, 476 (1998).

It bears noting, in this regard, that having been fairly called out by DOC’s motion papers, Petitioner completely whiffed. They failed entirely to support any of their assertions of fact; indeed, their Statement of Undisputed Facts almost directly mimics DOC’s. “Although pro se litigants receive some leeway from the courts, they are still bound by the ordinary rules of civil procedure.” *Fox v. Fox*, 2022 VT 27, ¶ 39. Thus, this failure leaves DOC’s facts as undisputed. *See* V.R.C.P. 56(e)(2).

Viewed through this lens, the following factual narrative emerges. In December 2021, Petitioner was incarcerated at the Southern State Correctional Facility. On December 3, 2021, the Department of Corrections (DOC) received a report alleging that Petitioner had sexually harassed another inmate. On December 21, 2021, DOC placed Petitioner in disciplinary segregation pending the disciplinary investigation.

The investigating officer interviewed the reporting inmate. The reporting inmate reported that Petitioner had on numerous occasions expressed a desire to perform sexual acts with them and had written letters communicating such. The inmate gave the letters to the investigating officer. On December 16, 2021, DOC issued a disciplinary report (DR) alleging a Major A4 disciplinary violation for sexual abuse or sexual assault. DOC set the due process hearing for December 23, 2021, but continued it at Petitioner’s request to secure the attendance of two witnesses.

On December 24, 2021, DOC held the administrative due process hearing for the Major A4 violation. Petitioner was present. The hearing officer heard the testimony from Petitioner, their two witnesses, and one other witness. The hearing officer also considered letters retrieved during the investigation. The hearing officer concluded that Petitioner had not committed a Major A4 violation; he determined instead that Petitioner’s letters to the reporting inmate constituted a Major B5 violation for making sexual proposals to another person. Petitioner appealed the disciplinary violation

conviction; they argued that the hearing was untimely. DOC upheld the conviction and continued the disciplinary segregation.

On December 29, 2021, DOC revoked Petitioner's physical access to the law library. It based this decision on Petitioner's "long history of continued violations of the rules of conduct"; the most recent such violation appears to have been Petitioner's letters suggesting they would trade sexual favors for legal assistance and arranging meetings in the library for that purpose. Nevertheless, DOC provided Petitioner a process by which to request legal research materials or DOC policies and a tablet to perform legal research.

The next day, DOC placed Petitioner on administrative segregation. DOC's Assistant Superintendent, who made this recommendation, did so "to mitigate [Petitioner's] risk of sexual abuse and sexual harassment to themselves and to others." DOC set the hearing for January 4, 2021, three business days after placing Petitioner on administrative segregation.

After that hearing, the hearing officer concluded that Petitioner had been found guilty of a Major B5 violation for making sexual proposals to another, that Petitioner admitted to performing sexual acts in their cell, and that Petitioner admitted to prostituting themselves. The hearing officer then concluded that Petitioner represented a risk to the general population, and so maintained them on administrative segregation. Petitioner appealed this decision; they argued again that the hearing was untimely. DOC upheld the decision.

Analysis

1. December 2021 Disciplinary Segregation

Petitioner first challenges their December 2021 disciplinary segregation. Even reading Petitioner's papers with the latitude traditionally afforded *pro se* submissions, Petitioner's only discernible legal basis for challenging this action is on "due process grounds." "[T]o properly preserve an issue, a party must present the issue to the administrative agency with specificity and clarity in a manner which gives the agency a fair opportunity to rule on it." *Pratt v. Pallito*, 2017 VT 22, ¶ 16 (internal quotes and brackets omitted). The only argument Petitioner preserved for this appeal is a challenge to the timeliness of their disciplinary segregation hearing. *See* Pl.'s Statement of Undisputed Material Facts, ¶¶ 34–36.

The timing of the disciplinary segregation hearing in this matter complied with DOC policy. Under DOC directives, an inmate placed in administrative segregation pending disciplinary investigation is entitled to a hearing within four business days, the first day being the first full business day after segregation begins. *See* DOC Directive 410.01. DOC placed Petitioner in segregation on Dec.

21, 2021. The hearing took place on Dec. 24, 2021—three days later. Moreover, DOC first set the hearing for December 23. The delay to December 24 came at Petitioner’s instance. DOC’s allowance of the continuance served due process, by allowing Petitioner to procure the attendance of two witnesses. In short, there was no due process violation here.

2. January 2021 Administrative Segregation

Next, Petitioner challenges DOC’s decision to place them in Administrative Segregation following the Disciplinary Segregation. Petitioner asserts that DOC “erroneously found Petitioner guilty of being a threat to the secure orderly running of a correctional facility.” Pl.’s First Amended Complaint (filed Feb. 24, 2022). This assertion does not withstand even passing scrutiny.

“In the context of a prison environment, [due process] protections have been subject to the necessarily broad discretionary authority of prison officials over prison administration.” *Conway v. Cumming*, 161 Vt. 113, 115 (1993). “The law requires some evidence of guilt in the administrative record to ensure that the administrative discipline was not arbitrary.” *LaFaso v. Patrissi*, 161 Vt. 46, 49–50 (1993) (internal quotations omitted). “Ascertaining whether this standard is satisfied does not require examination of the entire record. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455–56 (1985).

Here, more than “some evidence” supports DOC’s administrative segregation determination. The hearing officer had affidavits from Petitioner admitting to sexual conduct and prostitution contrary to DOC directives, the letters Petitioner sent to the other inmate proffering sexual services, and a record of Petitioner’s engaging in similar conduct in the past. This was more than enough to insulate DOC’s decision from challenge.

3. Law Library Access

Finally, Petitioner challenges the restriction of access to the law library. Earlier in these proceedings, Petitioner’s filings indicated that DOC had restricted their access to legal materials. The court directed that DOC file a written report regarding the nature and extent of the law library and photocopy access it had provided Petitioner. Entry Order (filed Nov. 1, 2022). The court also granted Petitioner the opportunity to amend their complaint to include a claim related to restricted law library access. *Id.* Defendant filed the report and Petitioner filed a third amended complaint.

There is no “abstract, freestanding right to a law library or legal assistance[.]” *Lewis v. Casey*, 518 U.S. 343, 351 (1996). “[P]rison law libraries and legal assistance programs are not ends in themselves, but only the means for ensuring a reasonably adequate opportunity to present claimed

violations of fundamental constitutional rights to the courts[.]” *Id.*, at 350–51. Thus, the issue here is whether DOC’s restrictions have deprived Petitioner of an adequate opportunity to present their claims.

As noted above, it is undisputed that DOC has restricted Petitioner’s physical access to the law library. Petitioner concedes, however, that DOC has provided them with a tablet that has access to a legal research application. DOC has also provided Petitioner with a process to request relevant DOC directives and policies. Indeed, Petitioner’s only alleged injury that is not sufficiently covered by an alternative process is that they lack access to photocopy services for hand-written documents. Petitioner has not suggested how that lack of access limits their ability to present their claims. Nor can the court discern any such limitation. *See id.*; *cf. State v. Ahearn*, 137 Vt. 253, 266 (1979) (concluding that “the functional equivalent of a law library” is an adequate alternative to direct physical access to a law library). Thus, notwithstanding the suspension of library privileges, the undisputed facts demonstrate that Petitioner has been afforded a reasonably adequate opportunity to present their claims. In short, there is no violation here.

ORDER

The court grants the motion for summary judgment (Motion 100). The clerk will enter judgment for all Respondents; their counsel shall submit the form of judgment required by V.R.C.P. 58. This decision obviates the necessity of the court’s deciding the several motions (Motions 112–18) filed in derogation of the court’s February 1, 2023 entry; those motions are all denied as moot.

Electronically signed pursuant to V.R.E.F. 9(d): 4/7/2023 9:47 AM



Samuel Hoar, Jr.
Superior Court Judge

Vermont Superior Court
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Windsor Unit