

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>THOMAS J. BARTELHO, JR.,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 95-146-B</b>
	)	
<b>BRYAN T. LAMOREAU, et al.,</b>	)	
	)	
<b>Defendants</b>	)	

***RECOMMENDED DECISION***

This matter arises out of the placement of Thomas J. Bartelho, Jr., a pre-trial detainee, in administrative segregation at the Kennebec County Correctional Facility following various threats of physical violence allegedly made by Bartelho against jail personnel. The plaintiff filed a complaint against the defendants, the Kennebec County Sheriff, the County itself, and various jail personnel, alleging, *inter alia*, violations of his civil rights pursuant to 42 U.S.C. § 1983 and state law.<sup>1</sup> Bartelho seeks declaratory and injunctive relief, compensatory and punitive damages, and attorney fees. By their answer, the defendants denied all material allegations and asserted a variety of affirmative defenses, including qualified immunity. The defendants have moved for a summary judgment on all counts of the plaintiff's complaint. The Court recommends that the motion be granted.

**I. Summary Judgment**

---

<sup>1</sup> The plaintiff's Sixth Amendment claim regarding access to the courts was dismissed without prejudice by a recommended decision of this Court dated October 10, 1995. The District Court affirmed the decision on January 22, 1996, but later vacated that part of the judgment that was in technical error on February 1, 1996, pursuant to Federal Rule of Civil Procedure 60(a).

A summary judgment is appropriate only "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). An issue is genuine, for these purposes, if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

Pending before the Court is the defendants' motion for a summary judgment. The plaintiff did not respond to the motion. In this District, a party's failure to timely respond to a motion is generally construed as a waiver of their objection to the motion. D. Me. R. 19(c). The Federal Rules of Civil Procedure require, however, that the Court examine the merits of a motion for a summary judgment regardless of the opposing party's failure to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991). Accordingly, the Court will examine the merits of the defendants' motion for a summary judgment based on the defendants' statement of material facts, which are as follows.

## **II. The Facts**

In this case, the material facts set forth and supported by the defendants and deemed consented to by the plaintiff are as follows.

Sometime in November 1994, Bartelho was transferred to the Kennebec County Correctional Facility on a "hold" for the United States Marshal Service. Bartelho was classified as a maximum

security inmate and was closely monitored because it was determined, based on his prior criminal record and on information learned from the Marshal Service, that he posed an escape risk. As part of this classification, Bartelho was not permitted to leave his housing area unless escorted by at least two corrections officers, and he also was required to be in restraints any time he left the jail's secured perimeters. Such conditions of confinement apply to all maximum security inmates at the jail.

Toward the end of November, jail personnel reported to their superiors that Bartelho had on several occasions threatened to severely injure a number of guards following customary pat searches of Bartelho. The searches were conducted prior to permitting Bartelho to engage in out-of-cell recreation. Based on the information given to them by the Marshal Service, a conversation with Bartelho, and their training and experience in law enforcement, all of the jail personnel involved agreed that Bartelho's threats should be taken seriously. Accordingly, Bartelho was placed in administrative segregation as a result of his behavior. As part of such segregation, Bartelho remained in his cell twenty-three hours a day and retained his maximum security classification. Bartelho was informed by the jail's supervisors of the reasons for his placement in administrative segregation, and jail personnel reviewed his status each day. The ultimate objective of the segregation was to return Bartelho to regular maximum security status as soon as his behavior permitted.

During his period of administrative segregation, Bartelho filed three separate grievances against jail personnel. The grievances all related to Bartelho's claim that he had been placed improperly in administrative segregation and that jail personnel had failed to respond timely to his complaints. Jail personnel investigated the complaints and reviewed the matters pursuant to the

policies delineated in the jail's written procedures. The grievances were found to be without merit.<sup>2</sup> The jail's administration determined that Bartelho's segregation was warranted and that his rights had not been violated by the staff. The findings were discussed with Bartelho, who was informed that he was not in administrative segregation as a form of discipline but, rather, because he was deemed to pose a threat to the safety and security of the facility and its personnel.

The plaintiff brought the current action alleging, *inter alia*, that his constitutional rights to due process of law, freedom of speech, and freedom from cruel and unusual punishment had been violated by his placement in administrative segregation. For the reasons that follow, the Court recommends that the defendants' motion for a summary judgment be granted.

### **III. Discussion**

#### ***A. Due process of law***

Bartelho apparently contends that he was deprived of due process of law when he was placed in administrative segregation following complaints by several guards that he had threatened them with physical violence. This claim must be rejected.

The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. The issue thus becomes whether Bartelho was deprived of a protected liberty interest when he was placed in administrative segregation.<sup>3</sup> Prisoners under confinement generally do not

---

<sup>2</sup> Bartelho filed a separate complaint with the Department of Corrections regarding his placement in administrative segregation at the Kennebec County Correctional Facility. Following an investigation and interview with Bartelho, the Department concluded that his placement was made for cause and in compliance with state correctional facility standards.

<sup>3</sup> Bartelho has not asserted that he possessed a liberty interest requiring due process of law at the time of his transfer. For purposes of this discussion, however, the Court construes his

enjoy a constitutionally-derived liberty interest. *See, e.g., Hewitt v. Helms*, 459 U.S. 460, 467 (1983) (state action taken within sentence imposed); *Meachum v. Fano*, 427 U.S. 215, 225 (1976) (transfer to higher security prison); *Bowser v. Vose*, 968 F.2d 105, 106 (1st Cir. 1992) (denial of furlough). In *Hewitt*, the Supreme Court held that inmates placed in administrative segregation prior to a disciplinary hearing have only limited due process rights. Prison officials are "obligated to engage only in an informal, nonadversary review of the information supporting [the prisoner's] administrative confinement, including whatever statement [the prisoner] wished to submit, within a reasonable time after confining him to administrative segregation." *Hewitt*, 459 U.S. at 472.<sup>4</sup>

The Supreme Court recently reduced the burden on the government even further, holding that a prisoner's liberty interest generally will be "limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . , nonetheless imposes *atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life*." *Sandin v. Conner*, \_\_U.S.\_\_, 115 S.Ct. 2293, 2300 (1995) (internal citations omitted) (emphasis added). The Court applied this standard in *Sandin* and found that a prisoner's placement in segregated confinement for thirty days "did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest." *Id.* at 2301; *see also Dominique v. Weld*, 73 F.3d 1156, 1159-60 (1st Cir. 1996) (inmate had no liberty interest in remaining in work release status because state's action did not affect duration of

---

argument to be that he did, in fact, possess such an interest.

<sup>4</sup> In *Hewitt v. Helms*, 459 U.S. 460 (1983), the Court also held that inmates had a right to due process because certain prison regulations had conferred a liberty interest on them. The Supreme Court essentially overruled that portion of *Hewitt* in *Sandin v. Conner*, \_\_U.S.\_\_, 115 S.Ct. 2293, 2300-02 (1995), however.

his sentence or impose an atypical and significant hardship on the inmate in relation to ordinary incidents in prison); *Leacock v. Dubois*, 937 F. Supp. 81, 83 (D. Mass. 1996) (inmate's placement in administrative segregation prior to disciplinary hearing did not violate his due process rights).

Against this backdrop, it becomes clear that Bartelho almost certainly had no protectable liberty interest in anything and, even if he did, he was afforded all the process that was due. The defendants' action in placing Bartelho in administrative segregation prior to a trial did not affect the duration of his eventual sentence or impose an atypical and significant hardship on him compared to the ordinary incidents of prison life. Accordingly, the Court recommends that the defendants' motion for a summary judgment be granted with respect to Count I of the plaintiff's complaint.

***B. Other constitutional claims***

In Count II of his complaint, Bartelho contends that he was subjected to unnecessary pain and suffering in violation of his First, Fifth, Eighth, and Fourteenth Amendment rights because he was not allowed to possess certain hygiene products, to shower whenever he wanted, and was forced to remain in handcuffs when he was not in his cell. He also avers that he was subjected to punishment without due process of law.

Even viewing the plaintiff's contentions in a most favorable light, the Court is unable to conclude that he has presented any triable issues. No facts are offered by the plaintiff in support of these claims, aside from generalized allegations. The Court thus recommends that the defendants' motion for a summary judgment with respect to Count II of the plaintiff's complaint be granted.

***C. State law claim***

In Count III of his complaint, Bartelho simply alleges that the defendants' violated "state law" and the "regulations of K[ennebec] C[ounty] C[orrectional] F[acility]." The plaintiff claims that

state laws were violated because he was placed in segregation without being subjected to disciplinary procedures and because he was not permitted to engage in meaningful recreation. Because the plaintiff's generalized allegations fail to state a claim, and in view of the fact that the plaintiff has not complied with the notice requirement of the Maine Tort Claims Act, 14 M.R.S.A. § 8107 (1980 & Supp. 1995), the Court need not reach the merits of this claim. The Court recommends that the defendants' motion for a summary judgment with respect to the plaintiff's Count III also be granted.

***D. Remaining claims***

The plaintiff's remaining claims for a declaratory judgment, injunctive relief, and punitive damages are without merit and, accordingly, the Court recommends that they be denied.

**IV. Conclusion**

For all of the foregoing reasons, the Court recommends that the defendants' motion for summary judgments on all counts of the plaintiff's complaint be GRANTED.

**NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

---

Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on February 11, 1997.