

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

HERBERT M. ADAMS, IV,)
)
 Plaintiff)
)
v.) Civil No. 98-0248-B
)
AROOSTOOK COUNTY JAIL,)
et al.,)
)
 Defendants)

RECOMMENDED DECISION

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 and state law.

Plaintiff attached to his Complaint a “Notice to Governmental Entity Under the Maine Tort Claims Act” that described the basis of his claim as follows:

That on or about December 1, 1996, Herbert Adams, IV was an inmate at the Aroostook County Jail in Houlton, Maine. The jail at that time had his medical records regarding the severe problems and injuries he had with his upper right leg. On December 1, 1999 Officer Craig Williams assaulted Mr. Adams without provocation and while being aware of Mr. Adams [sic] disability and injuries. Mr. Adams was thrown backward with great force against a wooden bench which he struck with his back and the Officer then caused additional injury to his leg and other parts of his body while acknowledging that he was aware of Mr. Adams [sic] disability and problems with his right leg.

Construing Plaintiff’s pro se Complaint liberally, as we must, Plaintiff has also asserted claims regarding his attempts to obtain medical care following the

incident. Defendants have moved for summary judgment on the entirety of Plaintiff's Complaint. They argue, among other things, that they are entitled to discretionary function immunity for Plaintiff's claims arising under state law, and to qualified immunity for Plaintiff's claims arising under section 1983.¹

Discussion

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). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993). "A trialworthy issue exists if the evidence is such that there is a factual controversy pertaining to an issue that may affect the outcome of the litigation under the governing law, and the evidence is 'sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side.'" *De-Jesus-Adorno v. Browning Ferris Ind. Of Puerto Rico*, 160 F.3d 839, 841-42 (1st Cir. 1998) (quoting *National Amusements v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995)).

¹ Defendants' other arguments raise procedural issues. The Court prefers to address the merits of Plaintiff's claims.

However, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at 30 (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

Plaintiff has not responded to Defendants' Motion for Summary Judgment. In this District, a party's failure to timely respond to a motion is generally construed to waive objection to the motion. D. Me. R. 7(b). However, the Federal Rules of Civil Procedure require us to examine the merits of a motion for summary judgment regardless of the opposing party's failure to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991). Accordingly, we will examine the merits of Defendants' Motion for Summary Judgment based on Defendants' Statement of Material Facts.

Defendants' Statement reveals that at 6:25 p.m. on December 1, 1996, Defendant David Hanson went to the north side of the jail to investigate a noisy argument between Plaintiff Herbert Adams and another inmate, Derek Long. Mr. Hanson watched Mr. Adams enter his cell. When Mr. Long followed Mr. Adams

into the cell, Mr. Adams punched Mr. Long on the shoulder. Mr. Hanson called for backup, after which Defendant Williams and another officer escorted the two inmates to a holding area.

While being taken to the holding area, Mr. Adams began cursing at the officers and tried to kick them. Sgt. Williams ordered Mr. Adams to sit on a bunk in a cell, but he refused, and instead began yelling and swinging his arms. Sgt. Williams warned Mr. Adams to sit down or he would be sprayed with pepper spray.

Mr. Adams advanced on Sgt. Williams in a threatening posture. Sgt. Williams sprayed a one-second burst of pepper spray into Mr. Adams' face. Mr. Adams was calm for a minute, then began kicking the cell door and punching the walls. Sgt. Williams and other staff then placed restraints on Mr. Adams to keep him from harming himself. After about ten minutes, the restraints were removed. Mr. Adams was then cleaned and returned to his cell.

Sgt. Williams complied with the Jail's procedures on the use of pepper spray in this incident.

Mr. Adams was on narcotic pain medications (Oxycodone) before the incident described above. During November of 1996, Mr. Adams had reportedly tried to hide medication under his tongue, and as a result, was given the

medication in a crushed form to prevent this. Mr. Adams continued to receive his medication on a regular basis and objected to having his pills given to him in a crushed form. It was noted in early December that one pill was missing when the number of dosages was compared with the total number of pills that had been in the prescription.

On December 3, 1996, Mr. Adams reported to sick call at the jail, and was attended to by Defendant Casey White, who was providing treatment services to inmates under the direction of Paul Romanelli, M.D., a licensed physician in the State of Maine. Mr. Adams complained that his right knee was swollen and painful. At sick call, Mr. Adams' knee was examined and noted to have no swelling or bruising, with normal range of motion and no pain on palpation. Mr. Adams' back was also examined, and noted to have normal range of motion with no spasm. Mr. Adams was observed to move about normally with no sign of distress. Mr. Adams was continued on his medications for pain.

Mr. Adams reported again to sick call on December 10, 1996, and was seen again by Defendant White. He was diagnosed with back strain, and informed that the condition would likely self-resolve. Mr. Adams requested an orthopedic evaluation. The medical staff questioned the need for this, but noted that Mr. Adams could be seen through the Veterans' Administration if the jail's

administration agreed. Mr. Adams was not seen by an orthopedist while at the jail, but was released from the jail on January 14, 1997.

The Court is satisfied that Defendants are indeed entitled to immunity for the actions set forth above. Under the doctrine of qualified immunity, government officers are shielded "from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Hegarty v. Somerset County*, 53 F.3d 1367, 1373 (1st Cir. 1995) (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). In this case, Defendants are clearly entitled to qualified immunity under this standard.

First, it has long been clearly established that Defendants are entitled to use so much force as is reasonably necessary to maintain or restore discipline, but that Plaintiff is entitled to be free from force that is applied "maliciously and sadistically for the very purpose of causing harm." *Unwin v. Campbell*, 863 F.2d 124, 129 (1st Cir. 1988) (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2nd Cir.), *cert. denied*, 414 U.S. 1033 (1973)). This record reveals a minimal amount of force appropriate for the purpose for which it was needed.

Second, it is clearly established that Plaintiff's claim for inadequate medical care rises to the level of a constitutional violation only if Defendants exhibited "deliberate indifference to serious medical needs." *Watson v. Caton*, 984 F.2d

537, 540 (1st Cir. 1993) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

“The courts have consistently refused to create constitutional claims out of disagreements between prisoners and doctors about the proper course of a prisoner’s medical treatment, or to conclude that simple medical malpractice rises to the level of cruel and unusual punishment.” *Id.* This record reveals just such a disagreement; Plaintiff may have preferred a different type of care, but there is no suggestion that Defendants were “deliberately indifferent to [his] serious medical needs.”

Discretionary function immunity protects corrections officials from liability in the performance of their duties so long as their conduct does not ““exceed, as a matter of law, the scope of any discretion they could have possessed.”” *Ellis v. Meade*, 887 F. Supp. 324, 331 (D. Me. 1995) (quoting *Bowen v. Department of Human Serv.*, 606 A.2d 1051, 1055 (Me. 1992)). Certainly Defendants’ actions in managing this unruly situation did not exceed the scope of their discretion.

Conclusion

For the foregoing reasons, I hereby recommend Defendants’ Motion for Summary Judgment 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 on: August 13, 1999