

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

DANIEL J. MITCHELL, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil No. 02-107-B-S  
 )  
 AARON NEUREUTHER, )  
 )  
 Defendant )

**MEMORANDUM OF DECISION  
ON MOTION FOR SUMMARY JUDGMENT <sup>1</sup>**

Daniel Mitchell has filed this 42 U.S.C. § 1983 action complaining of events during his stay at the Aroostook County Jail in 2002, when he was placed in a toilet-less cell. (Docket No. 2.) Mitchell alleges that over the course of the evening after his transport to the facility his requests to use the bathroom were denied, he had a bowel movement in his pants, informed Aaron Neureuther, a jail employee, of his need to clean up, but was made to sit in his feces for five hours. Neureuther has filed a motion for summary judgment (Docket Nos. 21 & 22) to which Mitchell has not responded. I now **GRANT** Neureuther's motion as he is entitled to judgment as a matter of law for the reasons that follow.

***Summary Judgment Standard***

Neureuther is entitled to summary judgment 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 [Neureuther] is

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<sup>1</sup> Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge Margaret J. Kravchuk conduct all proceedings in this case, including trial, and to order entry of judgment.

entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if its resolution would "affect the outcome of the suit under the governing law," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), and the dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," id. I review the record in the light most favorable to Mitchell, the mute opponent to summary judgment, and I indulge all reasonable inferences in his favor. See Feliciano De La Cruz v. El Conquistador Resort & Country Club, 218 F.3d 1, 5 (1st Cir. 2000). However, the fact that Mitchell has failed to place a single one of Neureuther's facts in dispute means that I deem the properly supported facts as admitted. See Faas v. Washington County, 260 F. Supp. 2d 198, 201 (D. Me. 2003). Mitchell's pro se status does not relieve him of his duty to respond, see Parkinson v. Goord, 116 F.Supp.2d 390, 393 (W.D.N.Y 2000) ("[P]roceeding pro se does not otherwise relieve a litigant of the usual requirements of summary judgment"), nor alter the Court's obligation to fairly apply the rules governing summary judgment proceedings, see Fed. R. Civ. P. 56; Dist. Me. Loc. R. Civ. P. 56.

### ***Applicable Eighth Amendment Standard***

Mitchell's claim is premised on the Eighth Amendment prohibition against cruel and unusual punishment. The denial of access to the toilet falls into the "conditions of confinement" genre of Eighth Amendment claims. The United States Supreme Court advises that, while "the Constitution 'does not mandate comfortable prisons,'" Farmer v. Brennan, 511 U.S. 825, 832 (1994) (quoting Rhodes v. Chapman, 452 U.S. 337, 349 (1981)), "neither does it permit inhumane ones, and it is now settled that 'the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment,'" id. (quoting Helling v. Mckinney, 509 U.S. 25,

31 (1993)). The Farmer Court explained that the Eighth Amendment “imposes duties on [prison] officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must ‘take reasonable measures to guarantee the safety of the inmates.’” Id. (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)).

Farmer’s discussion clarifies that the Eighth Amendment has an objective and a subjective component. See id. at 834. “First, the deprivation alleged must be, objectively, ‘sufficiently serious,’” id. (quoting Wilson v. Seiter, 501 U.S. 294, 297 (1991), ) that is, “a prison official’s act or omission must result in the denial of ‘the minimal civilized measure of life’s necessities,’” id. (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). Second, the prison official must have a “‘sufficiently culpable state of mind,’” id. (quoting Wilson, 501 U.S. at 297), and in prison-conditions cases as is Mitchell’s “that state of mind is one of ‘deliberate indifference’ to inmate health or safety,” id. (quoting Wilson, 501 U.S. at 302-03)). See also Overton v. Bazzetta, \_\_\_ U.S. \_\_\_, 123 S.Ct. 2162, \*2170 (2003).

As I explained in my decision recommending the denial of Neureuther’s motion to dismiss, Mitchell’s untested allegations stated a claim under these standards. See, e.g., Hill v. McKinley, 311 F.3d 899, 903 (8th Cir. 2002) ( Fourth Amendment violation when plaintiff was secured to the restrainer board naked and spread-eagled in the presence of male officers for three and a half hours, though the defendant prevailed on qualified immunity); Delaney v. DeTella, 256 F.3d 679, 683- 86 (7th Cir. 2001) (denying segregated inmate all out-of-cell exercise opportunities for six months was an objectively serious deprivation of a basic human need); Palmer v. Johnson, 193 F.3d 346, 349, 351-

53 (5th Cir. 1999) (overnight outdoor confinement without shelter, protective clothing, or acceptable means to dispose of bodily waste was a deprivation of the minimal civilized measures of life's necessities); but see Smith v. Copeland, 87 F.3d 265, 268-69 (8th Cir. 1996) (being subjected to an overflowing toilet in plaintiff's cell for four days was not violative of the pre-trial detainee's constitutional rights under the totality of the circumstance).

However, Neureuther has now tested Mitchell's allegations in this summary judgment motion buttressed by a statement of material facts, set forth below, and supported by appropriate exhibits and affidavits, facts that Mitchell has made no effort to contravene.<sup>2</sup>

### ***Material Facts***

Neureuther's undisputed material facts are as follows. Mitchell was driven to the Aroostook County Jail on June 3, 2002, by a Hancock County Sheriff's Department officer. He arrived in the sallyport area of the jail at 5:16 p.m. and within minutes became part of the jail's "head count." Arriving inmates are routinely place in a holding cell until they can be given a booking interview and be processed into the jail's population. Depending on how busy the intake area is, the normal time period it takes to process an inmate can range from forty-five minutes to eight hours. The jail has two cells which are rated by the Maine Department of Correction to hold inmates for up to six hours. The six-hour cells do not have toilets but have a floor grate or drain that can do

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<sup>2</sup> A June 20, 2003, letter to the clerk's office from Neureuther's counsel informs the court that correspondence to Mitchell concerning unanswered interrogatories that counsel sent to the address of record had been returned and advises that the summary judgment pleadings had also been returned as undeliverable. (Docket No. 23.) By endorsement the Court responded that the court had no other address for Mitchell and that this summary judgment motion would be ruled on at the expiration of the response time. The last filing signed by Mitchell was his consent to the magistrate judge, signed February 10, 2003. (Docket No. 20.) Mitchell is the plaintiff in this action and it is his obligation to keep the court and opposing counsel informed of an address for service.

service as a toilet. Inmates placed in the six-hour cells who want to use a toilet can request access from the officers working the intake area. Although such toilet requests can be made, it is not uncommon for inmates to relieve themselves using the holding cell floor drain. This drain is flushable from outside the cell on an officer's own initiative or in response to an inmate's request.

On June 3, 2002, Neureuther was working at the jail as a corrections officer, rotating between the various sections of the jail. Between 4:00 p.m. and 6:00 p.m., Neureuther worked the west wing of the jail and would have had no contact with Mitchell. Between 6:00 p.m. and 7:50 p.m., Neureuther worked as a rover, moving around to areas of the jail where he was needed. In the 8:00 p.m. to 10:00 p.m. stretch he worked in the Control Room, where, other than being able to observe the inmates in intake on the monitor, he would not have had direct contact with them. At most, Neureuther had limited contact with Mitchell and he does not recall any conversation with Mitchell that pertained to the use of the toilet or the call of bodily functions. After his 8:00 p.m. rotation into the Control Room Neureuther had no contact with Mitchell whatsoever.

Mitchell never told Neureuther that he had soiled his pants while Mitchell was in the holding cell on June 3, 2003. Neureuther never directed any offensive language towards Mitchell.

The Aroostook County Jail Administrator reviewed the jail's records and interviewed the June 3, 2002, jail staff and found no record that Mitchell soiled his pants while in a six-hour holding cell. This administrator found no one who could confirm that this soiling incident occurred. Mitchell's booking interview occurred at 8:55 p.m. The

booking officer is aware that Mitchell had not soiled his pants as, if that had been the case, he would have been sent to the shower area to clean himself before the interview. Once booking was completed, Mitchell was escorted to the changing area of the jail where he was asked to strip out of his clothes and get into the shower. The correctional officer who accompanied Mitchell to the changing room took Mitchell's clothes out to be placed in a bag and held during Mitchell's incarceration. This officer is aware that Mitchell had not soiled his pants because the pants would never have been placed in property storage in a soiled condition. The booking process was completed at 9:43 p.m., at which point Mitchell was taken to a jail cell "Flex 207."

Giving Mitchell the benefit of all reasonable inferences, this record cannot support a conclusion that Neureuther acted or omitted to act in any way that negatively impacted Mitchell's conditions of confinement during the period in question, much less does it support a determination that his act or omission resulted in the deprivation of a "minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Accordingly, Neureuther is entitled to judgment as a matter of law.

### ***Conclusion***

For the reasons provided above, I **GRANT** Neureuther's unopposed motion for summary judgment.

### **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) 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.

July 22, 2003

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Margaret J. Kravchuk  
U.S. Magistrate Judge

**PRISONERCIVILRIGHTS, CONSENTMAG**

**U.S. District Court  
District of Maine (Bangor)  
CIVIL DOCKET FOR CASE #: 1:02-cv-00107-MJK  
Internal Use Only**

MITCHELL v. NEWRYDER, et al

Assigned to: MAG. JUDGE MARGARET J.  
KRAVCHUK

Referred to:

Demand: \$40000

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 42:1983 Prisoner Civil Rights

Date Filed: 06/25/02

Jury Demand: Plaintiff

Nature of Suit: 555 Habeas Corpus  
(Prison Condition)

Jurisdiction: Federal Question

**Plaintiff**

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**DANIEL J MITCHELL**

represented by **DANIEL J MITCHELL**  
22 HIGHLAND LANE  
BANGOR, ME 04401  
PRO SE

V.

**Defendant**

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**AARON NEUREUTHER**

represented by **MICHAEL J. SCHMIDT**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*