

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

OLAF NORDMANN, et al.,            )  
  )  
                                  Plaintiffs    )  
  )  
v.                                        ) Civil No. 03-103-P-C  
  )  
BRIAN MADDOX, et al.,            )  
  )  
                                  Defendant    )

***RECOMMENDED DECISION ON MOTION FOR SUMMARY JUDGMENT***

In this civil rights action prosecuted by Olaf Nordmann<sup>1</sup> complaining of aspects of his disciplinary proceedings at the York County Jail, the defendants have moved for summary judgment. (Docket No. 21.) Nordmann has not filed a response. Because I have concluded that the defendants are entitled to judgment as a matter of law, I now recommend that the Court **GRANT** their motion for summary judgment with respect to all of Nordmann’s claims.

***Grounds in the Complaint***

The claims in Nordmann’s complaint boil down to three cognizable 42 U.S.C. § 1983 grounds: improperly filing disciplinary charges against Nordmann in retaliation for the filing of grievances, numerous due process infirmities with his disciplinary

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<sup>1</sup> Initially there were two other plaintiffs in this action, Jason Adams and Michael Frechette. However, these two individuals have not prosecuted the action and in a separate order I have recommended that the Court grant judgment in favor of the defendants with respect to the Adams and Frechette claims.

hearing process, and the denial of access to courts in that he was denied law library materials during the preparation period for his disciplinary hearing.<sup>2</sup>

### ***Summary Judgment Standard***

The defendants are 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 [they are] 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 view the record in the light most favorable to Nordmann, the silent opponent of 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 Nordmann has failed to place the defendants’ 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).<sup>3</sup>

### ***Undisputed Material Facts***

Olaf Nordmann was sentenced on December 2, 2002, to serve nine months for a Class C assault conviction. (Defs’ SMF ¶ 3.) In February of 2003, Nordmann, along

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<sup>2</sup> Nordmann also asserts that he has two claims sounding in tort: “commanding influence” and “deliberate indifference” to grievance use. I could not identify resonations of either tort in Maine law.

<sup>3</sup> Nordmann’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 does it mitigate this 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.

with former co-plaintiffs, Michael Frechette, and Jason Adams, was housed in K Block, which is a portion of the York County Jail designated to house minimum security inmates and/or inmates on trustee status, and these three were all on trustee status. (Id. at ¶¶ 4-5.)

At this time, one of the York County Jail shift supervisors, Daniel Dubois, received an unsigned inmate request indicating that the inmates of K Block were getting sick of Nordmann running the block and “branding” inmates with a shower shoe and pieces from a comb. (Id. ¶ 6.) The request also identified that Inmate Boisvert had been pinned down and hit with the shoe, leaving an imprint of a heart on his stomach. (Id.) Dubois went into the cell block and asked Boisvert to show him his stomach. Boisvert lifted his shirt, and Dubois noted a dotted heart shape on his stomach. Dubois questioned Boisvert about what the marks were, and Boisvert said it was a rash. Dubois told Boisvert if he lied to him again, he would be fired from being a trustee and would possibly lose his good time. (Id. ¶ 7.) Dubois also told Boisvert he knew about the branding. Boisvert indicated that he did not want to rat on anyone, but acknowledged that Frechette and Adams had held him while Nordmann hit him with a shoe, leaving the mark. Boisvert further explained that they had tried to put it on his backside, but when he kept fighting, they put it on his stomach. (Id. ¶ 8.)

Sergeant Dubois reviewed the block tape and saw the described incident take place. He also ordered a shakedown of the block, at which time Jail staff found a shower shoe with a heart-shaped and a K imprint where the comb tines had been inserted. (Id. ¶ 9.) Dubois asked Frechette about the incident, and Frechette stated he was present but did not actually see anyone hit with the branding device. (Id. ¶ 10.) Dubois spoke with Adams, who said it was a game, and he had even seen Boisvert hit somebody. (Id. ¶ 11.)

Dubois also spoke with Nordmann, who stated he knew nothing about the incident. (Id. ¶ 12.)

After completing this initial inquiry, as shift supervisor, Dubois assigned an officer to investigate and determine whether there were disciplinary infractions. (Id. ¶ 13.) On February 25, 2003, the investigation was completed, and the matter was referred to the disciplinary board. (Id. ¶ 14.) The disciplinary board, upon the investigator's recommendation, issued Nordmann, Frechette, and Adams a notice of a disciplinary hearing panel to convene on February 26, 2003, pertaining to a number of disciplinary charges brought against these three inmates arising out of the branding incident. (Id. ¶ 15.)

At the disciplinary hearing, Nordmann raised a number of procedural issues. First, he identified that he wanted to call witnesses in his defense. (Id. ¶ 16.) Nordmann submitted a list of questions that he wanted asked of witnesses. (Id. ¶ 17.) Nordmann also raised the issue of an impartial hearing board with respect to Defendant Shawn Valliere, who was serving as the hearing board panel chairperson. (Id. ¶ 18.) Nordmann was asked at the outset of the hearing if he had any problems with any of the hearing officers and responded "no." (Id. ¶ 19.) As the hearing proceeded, and the hearing board officers attempted to ask questions of Nordmann with respect to what happened, Nordmann refused to answer questions and demanded that he be allowed to call witnesses. (Id. ¶ 20.) Valliere informed Nordmann that they had not reached that stage of the proceedings yet and that Nordmann needed to answer the questions. (Id. ¶ 21.) Nordmann began to argue with Valliere and then demanded that Valliere recuse himself from the panel since he was not impartial. (Id. ¶ 22.) The basis for Nordmann's claim

that Valliere was not impartial was that Valliere had delivered the notice of the disciplinary board hearing to Nordmann and the other inmates, and that Valliere was involved in answering grievances. (Id. ¶ 23.) Valliere did not agree that this necessitated his disqualification on impartiality issues, but nonetheless did step down from the hearing panel. (Id. ¶ 24.) Another corrections officer (Riley) was brought in to replace Valliere on the panel. (Id. ¶ 25.) The ranking staff member, Jill Leblanc, became the disciplinary board chairperson. (Id. ¶ 26.) The disciplinary board panel attempted to proceed, but Nordmann refused to answer questions, and continued to argue and demand that he be allowed to call witnesses. (Id. ¶ 27.) Leblanc, who had never served as chairperson, decided that the process was not working and called the disciplinary board panel to convene. (Id. ¶ 28.)

The panel convened and discussed the review of the videotape of the alleged branding incident. (Id. ¶ 29.) According to Jill Leblanc, the tape showed the three inmates participating in branding Boisvert, and in Leblanc's opinion, Boisvert looked like he was being held against his will and did not enjoy being hit. (Id. ¶ 30.) As a result of their review of the videotape, the disciplinary panel made a determination that Inmates Adams, Frechette, and Nordmann were guilty of the disciplinary charges and recommended a loss of five days of good time credits and the loss of status as trustees. (Id. ¶ 31.) The disciplinary board recommendations were approved by the Jail Administration. (Id. ¶ 32.)

Nordmann filed an appeal dated March 14, 2003. (Id. ¶ 34.) In response to the appeal, Jail Administrator Michael Vitiello advised Nordmann that he was granting his appeal "in part" and ordering that Nordmann be given a new hearing. Vitiello pointed out

that Nordmann admitted in his letter to being involved in horseplay, but was only denying the assault and controlling issues. Vitiello instructed that the new hearing should allow Nordmann to support that statement and assist the board in reaching a fair decision. (Id. ¶ 35.) As a result of the disciplinary charges brought for branding another inmate and all other charges raised in the investigation initiated on February 18, 2003, and resulting in disciplinary board hearings and appeal, Nordmann's good time credits were restored. (Id. ¶ 51).

A new disciplinary board hearing was convened for Nordmann on April 1, 2003. Despite the Jail Administrator's instructions as to the appeal being limited to the assault and controlling issues, the disciplinary board issued a memorandum recommending that Nordmann be found innocent of all the charges. (Id. ¶ 36.) Upon review of this, the Jail administration issued a final decision authored by Captain John Angus on April 14, 2003, and approved by Major Michael Vitiello on April 16, 2003, which threw out or dropped disciplinary violations 11, 24, 28, 35, 36, 46, and 50. Further, due to the admitted violations and the fact that Nordmann was in a position of trust, it found Nordmann guilty of disciplinary rule 2 (inmates will not possess contraband of any kind), disciplinary rule 44 (all inmates working under the trustee program are expected to follow jail rules), and minor infraction Q (no inmate will engage in excessive noise or horseplay). (Id. ¶ 37.) During the pendency of the appeal, Nordmann had been reclassified from minimum security, trustee status, to medium security. (Id. ¶ 38.) Nordmann was subsequently reclassified on March 28, 2003, to maximum security as a result of a series of behavioral problems in the facility. (Id. ¶ 39.) Nordmann's subsequent behavioral indiscretions included an incident with Defendant Leo Rogers in which Nordmann was charged with

interfering with med pass on March 26, 2003, punching a holding cell door on March 27, 2003, making the threatening statement that “he was going to go off on somebody or something” and on March 28, 2003, Nordmann was involved in an altercation with another inmate, and they had to be separated by corrections officers. (Id. 40.)

Although Nordmann claims that he should not have been reclassified as a result of these incidents -- because he was found innocent of the one major charge brought against him before the disciplinary panel -- he acknowledges his involvement in what he called an altercation on March 28, 2003. (Id. ¶ 41.) These incidents in combination, or any one of them singly, were enough to justify Nordmann’s reclassification to maximum security. (Id. 42.) Based upon the incidents which occurred between March 26 and March 28, 2003, Nordmann would not have been returned to trustee status. (Id. ¶ 43.)

With respect to the denial of access claim, Nordmann submitted a grievance which identifies that he put in a law library request “around January 1st and received no words or books I requested.” (Id. ¶ 44.) Nordmann testified that the legal action which he alleges to have suffered prejudice from as a result of not having his library request responded to was the first disciplinary hearing. (Id. ¶ 45.) Nordmann’s law library request was made prior to the branding incident ever occurring, and the response to his grievance was made prior to his receiving notice of the disciplinary hearing. (Id. ¶ 46.) Brian Maddox, who handles the inmate law library requests, went and spoke with Nordmann regarding his January, 2003, law library request. When Maddox spoke with Nordmann, Nordmann indicated that he was “all set.” When Maddox received the grievance dated February 19, 2003, he wrote upon it, “Unless I misunderstood you, I thought you told me you were all set.” Nordmann never responded to this statement,

although he had numerous opportunities to see and/or speak with Defendant Maddox. (Id. ¶ 47.) Nordmann acknowledges that he was able to raise his procedural objections at the first disciplinary hearing and during the appeals process. (Id. ¶ 50.)

Nordmann was released from incarceration on June 28, 2003. (Defs' SMF ¶ 3.)

### *Discussion*

The disposition of this case is straightforward. The facts as presented and supported by the defendants, and entirely unchallenged by Nordmann, establish that there was no retaliatory impropriety as to the filing of disciplinary charges against Nordmann but that the disciplinary charges stemmed from a taped altercation vis-à-vis which Nordmann admits his involvement. On this record, the only grievance filed for which there could be retaliation is the grievance concerning the need for law library materials initiated in early January. That grievance seems to have been half-heartedly renewed by Nordmann in mid-February but Nordmann did not respond to Mr. Maddox's direct inquiry as to whether Nordmann was still in need of materials and Maddox interpreted this as Nordmann's indication that the grievance had been dropped. There is no inference that I can draw at this summary judgment stage that would support a conclusion that the disciplinary hearings on the branding incident were held to retaliate against these law library requests. Furthermore, these simple facts do not generate a concern that Nordmann was unconstitutionally denied access to legal materials. See *Bounds v. Smith*, 430 U.S. 817, 828 (1977).

Finally, while Nordmann asserts that there were numerous due process infirmities with his disciplinary hearing process, the un-rebutted facts as presented by the defendants do not sustain such a claim. While there seemed to be cause to question the propriety of

the procedure that evolved during the first disciplinary process on the branding incident, Nordmann appealed and he was indeed given a second hearing. There is no factual basis for the conclusion that there were procedural irregularities in that proceeding, whatever miscues there may have been in the first. Nordmann succeeded in obtaining the restoration of his good-time credits. With respect to his loss of trustee status, putting aside the concerns generated by Edwards v. Balisok, 520 U.S. 641 (1997) and assuming that trustee status would fall under its umbrella, the record demonstrates that the offense that Nordmann himself admitted committing, as well as other disciplinary offenses that followed, justified this status downgrade.

### ***Conclusion***

For these reasons I recommend that the Court **GRANT** this unopposed motion for summary judgment in favor of the defendants with respect to Olaf Nordmann's claims.

### **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.

November 25, 2003.

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

**PRISONERCIVILRIGHTS, BANGOR**

**U.S. District Court  
District of Maine (Portland)  
CIVIL DOCKET FOR CASE #: 2:03-cv-00103-GC  
Internal Use Only**

NORDMANN et al v. MADDOX et al

Assigned to: JUDGE GENE CARTER

Referred to: MAG. JUDGE MARGARET J.

KRAVCHUK

Demand: \$29000

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 42:1983 Prisoner Civil Rights

Date Filed: 05/02/03

Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights:

Other

Jurisdiction: Federal Question

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