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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

CRAIG C. McDONALD, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 82-0551-AM
WAYNE HUGGINS, Defendant.	)	

MEMORANDUM OPINION

Plaintiff McDonald is an inmate in the Virginia Correctional System. On April 30, 1981, plaintiff was placed in the Fairfax Adult Detention Center (ADC) in Fairfax, Virginia. According to plaintiff, he was bonded out of the ADC on May 1, 1981 and was later returned to the jail on September 29, 1981. Plaintiff is suing Sheriff Huggins under 42 U.S.C. §1983 on these grounds:

> (1) That plaintiff was injured on a weight lifting machine because of a defective part on the machine and/or its improper maintenance;
>
> (2) That plaintiff was improperly attended to by Physician's Assistant Simeon in connection with the alleged injury; and
>
> (3) That plaintiff was required to sleep in an overcrowded and unhygienic cell while at the ADC.

I. Factual Background

Plaintiff filed his §1983 action in June of 1982. By order dated June 16, 1982, plaintiff was advised that he had not properly named all of the defendants. Plaintiff was granted 20 days' leave within which to name them. He was further advised that if he failed to respond within that time, his case would be limited to an action against Sheriff Huggins. On August 25, another order was entered by this court which reaffirmed that since plaintiff had failed to name additional defendants within the two months time since the last order, the action was limited to Sheriff Huggins. On September 30, 1982, defendant filed his answer, a motion for summary judgment and several supporting affidavits. By order dated October 25, 1982, plaintiff was given 20 days within which to file any rebuttal material he desired. As of this date, plaintiff has not filed any such material. Plaintiff has not filed supporting affidavits or delineated any specific facts in the pleadings which would create genuine issues for trial. The staements made in defendant's supporting affidavits are therefore taken as true.

The facts relating to the §1983 action are as follows:

Upon plaintiff's reentry into the ADC, he was given the status of a kitchen trusty and as such he was granted privileges, i.e. unsupervised recreation time in the weight room. It is uncontroverted that on March 3, 1982, plaintiff was using the curling machine, which is one of the nine stations in the Universal Machine at the ADC. It is well supported in defendant's affidavits that McDonald

was a frequent user of the weights and had, in fact, been instructed several times by the staff as to the proper method of exercising on the machine. Jon Siska, the Recreation Director for the ADC, states that he had noticed McDonald using the curling apparatus in a "jerking" motion during exercise. Plaintiff had been warned that this "jerking" motion could cause the "S" hook to disconnect from the cable, and thereby cause injury to the user. That is apparently what happened on March 3. Plaintiff was in the exercise room by himself and as he pulled on the machine it snapped or disconnected, thereby causing him to hit his jaw and bite down on his tongue. After the incident occurred, plaintiff approached Sgt. Siska and Robert Murry, a Program Specialist and Assistant Recreation Director at the ADC, and explained that he had hurt his tongue. Sgt. Siska escorted plaintiff to the dispensary where he was attended to by Physicians Assistant Efren Simeon. It is uncontroverted that plaintiff suffered a laceration near the front of his tongue. Simeon states that it was a small laceration and plaintiff states that the laceration went completely through his tongue. In Simeon's medical opinion, it would have been unwise to suture such an injury because of the possibility of infection. He therefore made a medical judgment that sutures were not required and that a soft or liquid diet was the best remedy. Plaintiff alleges that he was denied adequate medical care because he didnot receive stitches and because he didnot see a doctor. Simeon states that plaintiff never returned to the dispensary for any follow-up problems nor did he

request to see a physician. Plaintiff alleges that after having a soft or liquid diet prescribed for him, he did not receive it. Both Siska and Murray state however, that because plaintiff worked in the kitchen he had no trouble getting a soft diet, and they, in fact observed him eating tomato soup on the day following the incident.

Plaintiff lastly complains about the overcrowded condition of the ADC. Sheriff Huggins and Jerry Harrison, Chief Diagnostic and Treatment Division of the ADC, state that although they did have to double bunk some of the inmates no one had to "literally" sleep on the floor. Inmates were provided with a mattress, sheets and blanket. In addition, Harrison states that once plaintiff was granted trusty status he was reassigned to different quarters and slept on a bunk as of January 22, 1982. Regarding the complaint about sleeping near toilet facilities, Harrison states that the cell in which plaintiff was assigned did not have toilet facilities. While in the ADC, plaintiff made no formal complaints about the living conditions or hygiene of the other inmates. There appears to be no factual support for plaintiff's third claim.

II. Legal Analysis

Under Estelle v. Gamble, 429 U.S. 97 (1976), the plaintiff must allege "deliberate indifference to serious medical needs." Estelle, supra at 104. Not every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment. For instance, "(a)n accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction

of unnecessary pain... Similarly, in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repuguant to the conscience of mankind.' Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment." Id., at 105-106. Even if this court were to take the facts in the light most favorable to the plaintiff, he does not state a cognizable claim under §1983 for cruel and unusual punishment. This court is satisfied that Physicians Assistant Simeon exercised sound judgment in his decision not to suture the tongue and plaintiff has alleged no serious or irreparable harm flowing from his treatment. Summary judgment on the Eighth Amendment claim is therefore granted.

Plaintiff has sued Sheriff Huggins for the negligent upkeep of the exercise equipment. There has been no evidence adduced or even alleged by the plaintiff that the curling machine was not in proper working order. Plaintiff makes the barest of allegations that "defendant failed to see that all recreational equipment was in good maintenance." Complaint ¶5. Although the local Sheriff has supervisory power over the jail within his jurisdiction, such tasks as the maintenance of the exercise room are left to those employed for such reasons. Both Siska and Murry state in their affidavits that the machine was in proper working order, that the "S" hook had not malfunctioned, and that the accident occurred due to plaintiff's inclination toward "jerking" the machine. Plaintiff

was given ample opportunity and extra time within which to rebut this evidence and he choose not to do this. This court has no alternative but to find that there is no material fact in dispute concerning the accident and that defendant is absolved from liability.

Lastly, plaintiff has sued Sheriff Huggins for what he characterizes as over-crowded and unhygienic conditions. Again, plaintiff has failed to respond to or rebut the evidence put forth by the defendant on this issue. It appears from Harrison's and Huggin's affidavits that although double bunking did occur, the inmates were adequately provided for and given mattresses upon which to sleep. In addition, the mere allegation of overcrowding does not constitute a constitutional violation. See Bell v. Wolfish, 441 U.S. 520 (1979); Rhodes v. Chapman, 452 U.S. 337 (1981). In Rhodes, supra, at 347, the Supreme Court states: "But conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." Based on the evidence in this case, it cannot even be said that McDonald was subjected to restrictive conditions. He was given trusty status and enjoyed more freedom and special privileges then were enjoyed by other inmates. There is no support for plaintiff's claim that he was subjected to unhygienic conditions. Thus, it appears that there is no material fact in dispute as to the conditions of confinement and as such, plaintiff does not state a

claim upon which relief can be granted.

The defendant's motion for summary judgment is granted and the case is accordingly dismissed.

Let the Clerk send a copy of this memorandum opinion and the attached order to plaintiff and to counsel for the defendant.

DATE: Jan. 20, 1983

Richard L. Williams
UNITED STATES DISTRICT JUDGE

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FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

CRAIG C. McDONALD, Plaintiff,	)	
v.	)	Civil Action No. 82-0551-AM
WAYNE HUGGINS, Defendant.	)	

ORDER

This case is before the court on defendant's motion for summary judgment under Rule 56(b) of the Federal Rules of Civil Procedure. For the reasons stated in the accompanying memorandum opinion, the motion for summary judgment is GRANTED, and, accordingly the case is DISMISSED.

Should the plaintiff desire to appeal, written notice must be filed with the Clerk of the Court within 30 days of this date.

Let the Clerk send copies of this order and the accompanying memorandum opinion to plaintiff and to counsel for the defendant.

DATE: Jan. 20, 1983

Richard L. Williams

UNITED STATES DISTRICT JUDGE