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

Alexandria Division

LELAND H. MORTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 82-709-A
)	
COMMONWEALTH OF VIRGINIA, <u>et al.</u> ,)	
)	
Defendants.)	

MEMORANDUM OPINION

This case arises out of plaintiff's action under 42 U.S.C. §1983. Plaintiff, a prisoner incarcerated in a facility of the Virginia Department of Corrections, essentially alleges that because he was transferred out of the Stafford Correctional Unit #21 (a facility of the Virginia Department of Corrections) he was unable to complete courses he had begun at the Elizabeth Brant School; and that when he was later transferred to a prison facility where he could continue the courses, the educational program involving the Virginia Department of Corrections and the Elizabeth Brant School was terminated. Plaintiff alleges that these actions deprived him of his rights under the United States Constitution, and that he is therefore entitled to relief under Section 1983. The action is presently before the court on defendants' motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure and defendants' motion for summary judgment under Rule 56. Because the court will rely on affidavits and other matters outside the pleadings, this motion will be treated as one for summary judgment. For reasons stated below, the defendants' motion for summary judgment is granted. Accordingly, plaintiff's action is dismissed.

I. FACTUAL BACKGROUND

From January 16, 1981 until October 27, 1981, plaintiff was incarcerated in the Norfolk City Jail. While he was there, two things of significance to this action happened to him:

(1) the plaintiff broke his arm in two places; (2) the plaintiff applied for and received a federal Basic Education Opportunity Grant which enabled him to attend business courses offered by the Elizabeth Brant School of Business (the "school"). Plaintiff began first quarter course work on July 6, 1981. He* completed the first quarter of course work (and qualified for the school's "Dean's List"), and had begun second quarter course work when he was transferred from the Norfolk City Jail to the State Correctional System.

While at the Powhatan Receiving and Classification Center, plaintiff sought to continue his education. Plaintiff was concerned that his arm injury would prevent him from eventually returning to his former occupation as an iron worker and shipfitter. Accordingly, plaintiff was transferred to the Stafford Correctional Unit #21, the only field unit where the inmates may attend the courses offered by the school. Plaintiff then reapplied to the school, and was admitted to recommence his second quarter studies on January 4, 1982.

One of the requirements of inmates at Unit # 21 enrolled in the school's classes is that they must work during the day and attend classes during the evening. Defendants contend that all inmates are advised of this requirement, and are required to sign a statement acknowledging it before they can participate in the program. See Affidavit of C.A. Neff, Superintendent of Stafford Correctional Unit #21, ¶ 3. Plaintiff denies that he was advised of the requirement or that he signed any statement of requirements.

Unit # 21 is a "road camp"; most inmates work for the Virginia Department of Highways. Inmates working on roads are generally classified as "A" medical status, signifying that they are considered physically capable of the type of work road crews perform. Very few inmates assigned to Unit #21 are not "A" status inmates, and there are very few jobs at Unit #21 (such as kitchen duty or clean up work) available to lower (or "B") medical status inmates.

Soon after the plaintiff had commenced his second quarter classes for the second time, it was determined that plaintiff's arm was not strong enough for road work. Plaintiff's medical status was changed to B-3. Plaintiff claims that he made fifteen requests for work assignments for which he was medically qualified, all of which requests were denied. Defendants contend that such requests were denied (if they were actually made; defendants have no record of such requests) because no suitable work assignments were available. Plaintiff asserts that such assignments were available. But defendants assert that because plaintiff was medically unable to perform the road work, and because there were no medically suitable assignments available, plaintiff was transferred in February 1982 out of Unit #21 to the Halifax Correctional Unit.

On May 4, 1982, plaintiff was again transferred, this time to the Staunton Correctional Center. Defendants claim that plaintiff was transferred there to facilitate his education, and present exhibits confirming this assertion. Plaintiff does not deny that the May, 1982 transfer was made to accommodate his educational requirements. On July 6, 1982 plaintiff began for the third time course work on the second quarter of business classes. He was so enrolled when he brought this action on July 12, 1982. But plaintiff contends in an amended complaint, and defendants do not deny, that on September 16, 1982, cooperative educational efforts between the Elizabeth Brant School and the Virginia

Department of Corrections were suspended. For the third time, plaintiff was unable to complete his second quarter course work.

Plaintiff contends that his February, 1982 transfer was made in retaliation for certain unrelated problems he had with the prison administration. He alleges that problems stemming from the defendants' refusal to honor a cashier's check, and to place funds in his inmate account, both of which are in contravention of prison regulations, may lay at the heart of the defendants' decision to transfer the plaintiff from Unit #21.

In any event, plaintiff contends that the February, 1982 transfer, and the September, 1982 elimination of the educational program caused the plaintiff to lose federal educational grant funding and prevented him from completing his education. Plaintiff claims that these alleged injuries violate his rights under the United States Constitution, and that therefore he is entitled to declaratory, injunctive and monetary relief under Section 1983. Defendants move for summary judgment on the grounds that plaintiff's case does not present any constitutional violations and that the various defendants all enjoy immunity from any liability in this case. For reasons given below, defendants' motion is granted.

II. LEGAL ANALYSIS

Plaintiff brings this action under 42 U.S.C. §1983. An action under Section 1983 has two essential elements: (i) the defendant must have been "acting under the color of state law"; and (ii) the defendant's conduct must have "deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States." Parratt v. Taylor, 451 U.S. 527, 535 (1981). In this case, the various officials and agencies involved were acting under color of state law. Id., 535-36. Thus, the remaining question is whether the defendants' action deprived plaintiff of any rights secured by the Constitution.

Plaintiff does not contend that he has a constitutional right to rehabilitation; he concedes that he does not. See, e.g., Bowring v. Godwin, 551 F.2d 44, 48, n.2 (4th Cir. 1977). His claim is that once prison officials allowed the plaintiff to begin his educational program, he acquired a right to finish. Plaintiff contends that this ripened expectation amounts to a constitutional interest. Plaintiff also contends that defendants interfered with this constitutional interest, first when they transferred him from Unit #21, and later when they eliminated the educational program altogether.

In arguing that the transfer violated his constitutional rights, plaintiff makes four particular contentions:(i) defendants failed to assign him to work assignments for which he was medically qualified; (ii) defendants transferred him from Unit #21, even though he was in the middle of his second quarter of classes ; (iii) the transfer was retaliatory; and(iv) the use of medical categorization was improper.

The first three of plaintiff's contentions relating to the transfer do not raise serious difficulties. Generally, work assignments are within the discretion of prison officials. See Althizer v. Paderick, 569 F.2d 812 (4th Cir. 1978). And prisoners are generally not entitled to a hearing when transferred to a less favorable prison. See Meachum v. Fano, 427 U.S. 215 (1976). In other words, defendants' actions were within their sound discretion. Nor do mere conclusory affidavits alleging improper or recriminatory motives for otherwise lawful acts raise a genuine issue of material fact sufficient to avoid summary judgment. See White v. Boyle, 538 F.2d 1077, 1079-80 (4th Cir. 1976).

Plaintiff does, however, raise an alternative argument of the transfer's unconstitutionality. Plaintiff contends that the work assignment and transfer decisions were based on his medical classification, and that he would have been able to

finish his schooling if he had been a different medical classification. Plaintiff asserts that this differential treatment violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.

The kind of scrutiny to which a court must subject differential treatment depends upon whether the differences implicate either a suspect classification or a fundamental right. If the challenged state action does not involve either of the two, it will not be "subjected to the searching judicial scrutiny reserved for laws that create suspect classifications or impinge upon constitutionally protected rights." San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 40 (1973). The court, instead will "inquire only whether the challenged distinction rationally furthers some legitimate, articulated state purpose." McGinnis v. Royster, 410 U.S. 263, 270 (1973). The rational basis test is the appropriate standard in this case. See, e.g., Jamieson v. Robinson, 641 F.2d 138, 142, n.4 (3rd Cir. 1981) (rational basis test applied to prisoner's claims of unequal treatment in absence of implication of suspect classification or fundamental interest).

Clearly, the medical classification of which plaintiff complains rationally furthers a legitimate state purpose. The medical classification is not designed to determine who shall be educated and who shall not, but who shall do the road work and who shall not. Prisoners at Unit #21 who are not medically qualified to do road work are not precluded from continuing their education, as long as they are able to obtain one of the limited number of jobs for which the medically unfit are qualified. Thus, not only does the medical classification serve a rational purpose, but it also was not directly responsible for plaintiff's inability to complete his studies.

Thus, plaintiff has no remaining ground from which to object to the transfer. The sole remaining ground upon which this action may be based involves the purported elimination of the business education program in September, 1982. While it is unconfirmed that the program between the Elizabeth Brant School and the Virginia Department of Correction was, in fact, eliminated, this court holds that even if the program was eliminated, the plaintiff suffered no constitutional injury as a consequence.

This court has already observed that prisoners enjoy no constitutional rights to rehabilitation. Yet plaintiff claims that, even though there is no constitutional requirement for such programs, once they are voluntarily undertaken, they cannot be eliminated without constitutional violation. Plaintiff would, in effect, have this court hold that he has a property interest in the continuation of his educational program. But "to have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must, instead, have a legitimate claim or entitlement." Board of Regents v. Roth, 408 U.S. 564, 577 (1972). The plaintiff can hardly claim to have an entitlement to a program of which he could have been deprived through simple transfer to a facility where the program was not offered, since both the transfer and the absence of rehabilitative programs at the new facility would be beyond constitutional reproach. Thus, since plaintiff has no constitutional claim to have access to such a program, nor even any ground from which to object if he had been deprived of access through simple transfer, he will not now be heard to claim that another form of deprivation creates a constitutional concern.

This court is not prepared to hold that prisoners, who have no constitutional expectation of rehabilitation, gain an entitlement to the continuation of what rehabilitation programs are voluntarily undertaken. Cf. Chu v. Schweiker, No. 82-6103 (2d Cir. Oct. 1, 1982)(physicians in a closed U.S. Public Health

Service Hospital do not have a constitutionally protected property interest in continuing their education). Such a holding would violate the wide latitude ordinarily given prison authorities in determining programs of treatment:

...court are ill-equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities.

Procunier v. Martinez, 416 U.S. 396, 405 (1976). Such matters as rehabilitation are committed to the sound discretion of prison authorities. Federal courts "do not sit to supervise state prisons", not to review "discretionary decisions that are not the business of federal judges." Meachum v. Fano, 427 U.S. 215, 229 (1976).

Plaintiff has failed to show that he was deprived of any rights secured by the constitution, and therefore he has failed to state a claim under Section 1983. Thus, the defendants are entitled to judgment as a matter of law. Their motion for summary judgment is granted, and the plaintiff's case dismissed.

DATE: Nov. 9, 1982

Richard L. Wilkins
UNITED STATES DISTRICT JUDGE

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FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

LELAND H. MORTON,)
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 Plaintiff,)
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 COMMONWEALTH OF VIRGINIA, et al.,)
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 Defendants.)

ORDER

This matter comes before the court on defendants' motion to dismiss under Rule 12(b)(6) and motion for summary judgment under Rule 56(b). Because the court will rely on affidavits and other matter outside the pleadings, this motion will be treated as one for summary judgment. For reasons stated in the accompanying memorandum opinion, the defendants' motion for summary judgment is granted. Accordingly, the plaintiff's action is dismissed.

Let the Clerk send a copy of this order and accompanying memorandum opinion to the plaintiff and to the Attorney General for the Commonwealth of Virginia.

DATE: Nov. 9, 1982

Richard L. Williams
UNITED STATES DISTRICT JUDGE