

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

Richmond Division

WILBUR BRICE ALLEN, )  
 )  
Plaintiff, )  
 )  
v. ) CIVIL ACTION NO. 81-0704-R  
 )  
TERRELL HUTTO, Director, )  
et al., )  
 )  
Defendants. )

MEMORANDUM OPINION

This matter comes before the court on the defendants' joint motion for summary judgment under Rule 56(b). See Fed. R. Civ. P. 56(b). For the reasons stated below, the court grants the summary judgment motion.

On July 28, 1981, Wilbur Brice Allen, a state prisoner at the Deep Meadows (Va.) Correctional Center, brought a section 1983 suit against the Director of the Virginia Department of Corrections and three officials of the Virginia State Penitentiary in Richmond. Allen alleges in his complaint that a fellow inmate stabbed him on April 4, 1981. At the time of this incident, he was incarcerated at the Virginia State Penitentiary. The plaintiff essentially makes two separate claims with respect to this assault. First, he asserts that the defendants were negligent in not posting guards in the place where the attack occurred. Second, he argues that the defendants are strictly liable for his safety. Allen asks for damages and an injunction ordering any further medical treatment that is necessary.

A plaintiff must make one of three allegations to recover under section 1983 for an assault by a fellow prisoner. First, the injured inmate may allege that "a pervasive risk of harm" existed in the prison. See Withers v. Levine, 615 F.2d 158, 161 (4th Cir.), cert. denied, 449 U.S. 849 (1980); Woodhous v. Virginia, 487 F.2d 889, 890 (4th Cir. 1973). Second, the plaintiff may assert that prison officials had knowledge that

he was in danger and failed to take reasonable steps to protect him. See Penn v. Oliver, 351 F. Supp. 1292, 1294 (E.D. Va. 1972). Finally, the plaintiff may allege that prison officials failed to segregate an inmate identified as unusually dangerous. See McCray v. Sullivan, 509 F.2d 1332, 1334 (5th Cir.); cert. denied, 423 U.S. 859 (1975). Allen does not make any of these claims in his complaint or motion in rebuttal. The court, therefore, must rule that he has not stated a valid section 1983 claim. For this reason, the court grants the defendants' motion for summary judgment.

\_\_\_\_\_  
United States District Judge

Date: \_\_\_\_\_