

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

BRIAN KEITH DENT,

Plaintiff,

No. 2:08-cv-0736-MCE-JFM (PC)

vs.

D. SILBAUGH, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding before the court with a civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the first claim in plaintiff’s third amended complaint filed May 1, 2009.¹ Therein, plaintiff claims that defendant Murthy filed a false rules violation report against plaintiff in retaliation for plaintiff’s acts of filings a grievance and another complaint against defendant Murthy. This matter is before the court on defendant Murthy’s motion for summary judgment.

////

////

¹ The remaining claims raised in the third amended complaint have been dismissed without prejudice due to plaintiff’s failure to exhaust administrative remedies prior to suit. See Order filed January 6, 2010.

1 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome
2 of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
3 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir.
4 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could
5 return a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433,
6 1436 (9th Cir. 1987).

7 In the endeavor to establish the existence of a factual dispute, the opposing party
8 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
9 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
10 versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary
11 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a
12 genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory
13 committee’s note on 1963 amendments).

14 In resolving the summary judgment motion, the court examines the pleadings,
15 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
16 any. Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson,
17 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the
18 court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587.
19 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to
20 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen
21 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.
22 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply
23 show that there is some metaphysical doubt as to the material facts Where the record taken
24 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no
25 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted).

26 ////

1 thoughts. Declaration of Brian Keith Dent in Opposition to Defendant’s Motion for Summary
2 Judgment, filed July 21, 2010, at ¶ 17²; Declaration of H. Murthy in Support of Motion for
3 Summary Judgment, filed July 2, 2010 (Murthy Declaration), at ¶ 11. Thereafter, defendant
4 Murthy filed a rules violation report charging plaintiff with threatening staff. After the IDTT
5 hearing, plaintiff was rehoused in a Department of Mental Health (DMH) facility. Ex. A to
6 Defendants’ Statement of Undisputed Facts, Administrative Segregation Unit Placement Notice,
7 filed July 2, 2010. On May 21, 2007, plaintiff was released from DMH. Id. Two days later he
8 was placed in administrative segregation based on the events of April 6, 2007. Id.

9 A disciplinary hearing was held on May 17, 2007. Ex. A, Rules Violation Report
10 – Part C. At the disciplinary hearing, plaintiff pleaded not guilty and stated “I can not like
11 someone if I want to. But I did not threaten him.” Id. Plaintiff was found guilty of threatening
12 staff. Id. The findings were based on defendant Murthy’s statement that plaintiff pointed at him
13 in a threatening and intimidating manner, and statements of two officers, contained in the
14 investigative employee’s supplemental report, who saw plaintiff point at defendant Murthy. Id.
15 One employee reported that plaintiff didn’t point at defendant Murthy when plaintiff said he had
16 homicidal thoughts; he pointed at defendant Murthy and said “I don’t like you.” Ex. A, Serious
17 Rules Violation Report. The hearing officer reduced the Serious Rules Violation Report to an
18 Administrative CDC 115, and plaintiff was warned and counseled. Ex. A, Rules Violation
19 Report – Part C.

20 ////

21 ////

23 ² In his opposition, which is not signed under penalty of perjury, plaintiff states that he
24 told the IDTT he was experiencing suicidal and homicidal thoughts. In his declaration, which is
25 signed under penalty of perjury, plaintiff aver, inter alia, that he told the IDTT that he was
26 “experiencing suicide thoughts” but makes no reference to homicidal thoughts. Plaintiff’s
opposition, however, demonstrates that he does not contest the evidence tendered by defendant
Murthy, in the form of Murthy’s declaration, that plaintiff stated during the IDTT that he felt
homicidal.

1 B. Legal Standards

2 Prison inmates have a right to be free from the filing of false disciplinary charges
3 in retaliation for the exercise of constitutionally protected rights.³ See Hines v. Gomez, 108 F.3d
4 265 (1997). Retaliation against prisoners for activity protected by the First Amendment “is itself
5 a constitutional violation, and prohibited as a matter of ‘clearly established law.’ See Rhodes [v.
6 Robinson], 408 F.3d [559] at 566 [(9th Cir. 2005)]; Pratt v. Rowland, 65 F.3d 802, 806 & n. 4
7 (9th Cir.1995).” Brodheim v. Cry, 583 F.3d 1262, 1269 (9th Cir. 2009). In Rhodes, the United
8 States Court of Appeals for the Ninth Circuit

9 set forth the five basic elements of a “viable claim of First
10 Amendment retaliation” FN3 in the prison context:

11 FN3. Although Rhodes concerned a district court’s
12 grant of a Rule 12(b)(6) motion to dismiss for
13 failure to state a claim, the elements of the claim are
14 the same on a motion for summary judgment. On
15 summary judgment, however, the plaintiff must
16 demonstrate there is a triable issue of material fact
17 on each element of his claim, as opposed to merely
18 alleging facts sufficient to state a claim.

19 (1) An assertion that a state actor took some adverse action against
20 an inmate (2) because of (3) that prisoner’s protected conduct, and
21 that such action (4) chilled the inmate’s exercise of his First
22 Amendment rights, and (5) the action did not reasonably advance a
23 legitimate correctional goal. 408 F.3d at 567-68. See also Barnett
24 v. Centoni, 31 F.3d 813, 815-16 (9th Cir.1994) (per curiam). We
25 also noted that a plaintiff who fails to allege a chilling effect may
26 still state a claim if he alleges he suffered some other harm.
Rhodes, 408 F.3d at 568 n. 11.

20 Brodheim, id. Plaintiff “bears the burden of pleading and proving the absence of legitimate
21 correctional goals for the conduct of which he complains” and, in assessing whether a
22 defendant’s action reasonably advanced a legitimate correctional goal, courts “should ‘afford
23 appropriate deference and flexibility’ to prison officials in the evaluation of proffered legitimate
24 penological reasons for conduct alleged to be retaliatory.” Pratt, 65 F.3d at 806-7.

3 This right is generally described as a substantive due process right.

1 The right to petition the government for a redress of grievances is a right protected
2 by the First Amendment. The right has been broadly construed to include “a person’s right to
3 seek redress from all branches of government.” Franco v. Kelly, 854 F.2d 584, 585-86 (2d Cir.
4 1988). Prison inmates are entitled to access to both administrative and judicial forums to seek
5 redress of grievances against state officials. Hines v. Gomez, 853 F.Supp. 329, 331 (N.D.Cal.
6 1994) (quoting Franco at 585-86).

7 C. Application

8 Defendant Murthy seeks summary judgment on the grounds that there is no
9 evidence either that his filing of the rules violation report did not reasonably advance a legitimate
10 correctional goal or that it was retaliatory. Defendant Murthy also contends that he is entitled to
11 qualified immunity.

12 Prison officials have a “valid interest in the peaceable operation of the prison
13 through the insistence on respect, rather than through violent confrontation.” Bradley v. Hall, 64
14 F.3d 1276, 1281 (9th Cir. 1995), *abrogated in part on other grounds by* Shaw v. Murphy, 532
15 U.S. 223 (2001). Disciplining an inmate for threatening staff is consistent with this legitimate
16 correctional goal. The undisputed evidence shows that during the IDTT hearing on April 6,
17 2007, plaintiff stated that he felt suicidal and homicidal and that he pointed at defendant Murthy
18 and stated that he didn’t like Murthy. In response to this incident, defendant Murthy filed a
19 CDC-115 Rules Violation Report charging plaintiff with threatening staff. Defendant Murthy
20 wrote:

21 On 4/6/2007, at approximately 0940 hours, treatment team met
22 with Inmate DENT, B. . . . and informed him that the team had
23 decided that he no longer required EOP level of care and was
24 appropriate for CCCMS. Inmate Dent became hostile and angry,
25 stating, I’m having homicidal thoughts. I can’t be around this
26 man.” He pointed at me in a threatening and intimidating manner.
This is clearly a verbal threat to kill me and I believe that Inmate
Dent is capable of acting on this stated threat. It also appears that
this is an attempt to manipulate staff through intimidation as he is
demanding to remain EOP.

1 Ex. A to Defendants' Statement of Undisputed Facts. Plaintiff does not dispute that he made the
2 statements attributed to him, nor does he dispute that he pointed at defendant Murthy. Defendant
3 Murthy interpreted plaintiff's behavior as a threat against him and issued the rules violation
4 report.

5 Defendant Murthy avers that he issued the rules violation report "in order to: (1)
6 put Mr. Dent on notice that his behavior was inappropriate, and to deter Mr. Dent from engaging
7 in future dangerous and threatening behavior; and (2) to place other correctional and medical
8 staff on notice of Mr. Dent's dangerous and threatening behavior so that they could take
9 appropriate steps to prevent him from engaging in any similar future behavior; and (2) to protect
10 my own safety and security and the safety and security of the institution" and that his "sole
11 motivation was to attempt to deter any future misbehavior by [plaintiff] so as to ensure the safety
12 and security of the institution." Murthy Declaration at ¶¶ 13-14. Given the specific facts that are
13 undisputed, and the deference that must be afforded to prison officials in assessing whether the
14 challenged action reasonably advanced a legitimate correctional goal, this court finds that
15 plaintiff cannot meet his burden of proving an absence of legitimate correctional goals for
16 defendant Murthy's action in issuing the rules violation report. For that reason, defendant
17 Murthy is entitled to summary judgment.

18 Accordingly, IT IS HEREBY RECOMMENDED that defendant's July 2, 2010
19 motion for summary judgment be granted.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
22 days after being served with these findings and recommendations, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned
24 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
25 shall be served and filed within ten (10) days after service of the objections. The parties are

26 ////

1 advised that failure to file objections within the specified time may waive the right to appeal the
2 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: February 17, 2011.

4
5 
6 UNITED STATES MAGISTRATE JUDGE

7 ¹²
8 dent0736.msg

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26