

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

EDWARD MOORE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 15-cv-0092-MJR-RJD
)	
ROBERT E. HUGHES,)	
VIRGIL SMITH, and)	
CHRISTOPHER ROTH,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

CHIEF JUDGE REAGAN:

Plaintiff Edward Moore is an inmate with the Illinois Department of Corrections (“IDOC”) at Menard Correctional Center (“Menard”). Moore asserts in this lawsuit that his constitutional rights were violated at Menard because he was provided inadequate due process at a prison disciplinary hearing. As a result of that disciplinary hearing, Moore spent 90 days in the Menard segregation unit and he argues that the conditions in segregation violated his Eighth Amendment rights. The Defendants in this matter, Robert Hughes, Christopher Roth and Virgil Smith, now seek summary judgment. (Doc. 125). Plaintiff filed a three-page opposition to the summary judgment wherein he reiterated his request for counsel, and generally opposed summary judgment (Doc. 135). For the following reasons, summary judgment is GRANTED as to all Defendants.

I. BACKGROUND

On the morning of February 6, 2014, Moore was performing legal work in the Menard prison law library. (Doc. 93-3, p. 7, Doc. 126-1, p. 3). Moore testified at his deposition that he was reviewing legal documents for a case he was working on when he noticed that some of his exhibits were missing. (Doc. 126-1, p. 4). Moore had submitted the documents and attached case law exhibits to be copied by prisoner law clerks, but the case law exhibits were never returned. *Id.* Moore then stood up from his desk and walked over to the desk of Tonya Knust, the prison law librarian, to inquire as to the missing case law exhibits. *Id.* Knust told Moore that the case law exhibits were removed because they were not needed for his filing. *Id.* Moore then turned around and began to head back to his seat. *Id.* At that moment, correctional officer Travis Lindsey, the officer on duty in the law library, called out to Moore and told him to bring his ID. *Id.* Moore gave Lindsey his ID and asked him "what did I do?" *Id.* Lindsey did not respond and Moore sat back down. *Id.*

Several minutes later, Lieutenant Robert Hughes arrived in the law library. (Doc. 126-1, p. 5). Hughes briefly spoke to Lindsey, and then Hughes asked Moore to explain what had happened. *Id.* Moore told Hughes that he did not know. *Id.* At that point Hughes placed Moore in handcuffs and escorted him to the segregation unit holding area. *Id.* It was soon discovered that the segregation unit was full, so Hughes was placed back in his normal cell. *Id.* Later that evening, Hughes received a disciplinary

report for the events that occurred in the law library. (Doc. 126-1, p. 6). The disciplinary report is drafted and signed by Lindsey. (Doc. 93-3, p. 7). It essentially states that Lindsey told Moore to sit down after he approached Knust (a law library employee), and at that point Moore became belligerent. *Id.*¹ As a result, Moore was charged with “intimidation or threats,” “unauthorized movement,” and “disobeying a direct order.” *Id.* After receiving the disciplinary report, Moore sent a letter to the Adjustment Committee providing a “witness statement” and requesting that Knust be present at the disciplinary hearing. (Doc. 126-1, pp. 6-7).

On February 10, 2014, the Menard Adjustment Committee held a hearing on Moore’s disciplinary charge. (Doc. 126-1, p. 5). The Adjustment Committee consisted of Hughes and another Menard official named Jason Hart. (Doc. 93-7, p. 12). Moore was allowed to present his written witness statement but the Adjustment Committee did not allow Moore to call Knust as a witness. (Doc. 126-1, p. 6). At the conclusion of the hearing, Moore was found guilty of the three charges. (Doc. 93-7, p. 12). As

¹ The disciplinary report states:

Observation: On the above date and approx. time [February 6, 2014 at 9:45 A.M.] this R/O was in charge of the law library. I/M Moore, Edward A70777 got up from his assigned seat #15 and preceded to the clerks window [sic]. This R/O instructed I/M Moore to return to his seat that he was assigned to that was have I/M clerks that will gladly answer any legal questions or request he may have. I/M Moore ignored this R/O and still continued to approach the clerks window and started threatening my I/M clerks stating they are not copying legal orders that I/M Moore wants copied this R/O approached the window where I/M Moore was standing and instructed I/M Moore to return to his assigned seat that if he has any questions they have I/M floor clerks that will help him with any issues he may have. I/M Moore told this R/O to “fuck off” “that he was going to get answers today or he will not leave the library.” This R/O asked I/M Moore to return to his seat for the third time. I/M Moore just stood there at the clerks window staring at this R/O. This R/O instructed I/M Moore to give this R/O his I/D. I/M Moore handed this R/O his ID and said “this is some bullshit” this R/O notified my school Sgt. B. Hill of the situation. Sgt. Hill notified Lt. Hughes of the situation. Lt. Hughes escorted I/M Moore back to North 2 cell house. End of Report. (Doc. 93-3, pp. 7-8).

punishment, Moore was given three months of “C Grade,” three months of segregation and a three month commissary restriction. *Id.*

After the hearing Moore was immediately escorted to the segregation unit by Defendant Christopher Roth. (Doc. 126-1, p. 11). Upon arriving at his new cell, Moore noticed that it was filthy. (Doc. 126-1, p. 12). The cell lacked sheets or a pillowcase; there was garbage on the cell floor; the toilet was caked with urine and feces; the mattress was stained brown and smelled of urine; the pillow was stained; and it appeared that someone had smeared feces on the walls. (Doc. 126-1, pp. 13-17). Moore also noticed that the sink did not provide cold water, and the hot water came out of the faucet at a very low pressure (described by Moore as a “dribbl[e]”). (Doc. 126-1, p. 17). As Roth removed Moore’s handcuffs, Moore asked him if he could have some bed linens and cleaning supplies. (Doc. 126-1, p. 12). Roth told Moore that no cleaning supplies or linens were available. (*Id.*).² Roth also mentioned that there were no open cells in the segregation unit, and so Moore could not be moved to a different cell. (Doc. 7, p. 19). Moore spent the next 90 days in the segregation cell, and he had no further interactions with Roth while there. (Doc. 126-1, p. 12).

Ten or eleven days after being placed in the segregation cell, an inmate worker delivered a bag containing Moore’s personal property. (Doc. 126-1, p. 13). Typically,

² In his Complaint, Moore alleged that he told Roth about the plumbing issue and Roth told him that a work order was pending. (Doc. 7 at 19). However, at his deposition, Moore admitted that he did not speak directly with Roth about the plumbing issue because he only saw Roth when he was placed in the cell and he had not yet discovered the plumbing problem at that time. (Doc. 126-1, p.12).

personal property was delivered to an inmate in segregation within 24 hours. (*Id.* at 12). The bag included sheets, a pillowcase, half a bar of soap, shampoo, rags and legal papers. *Id.* Moore used an extra wash rag to clean up the cell, but much of it remained dirty. (Doc. 126-1, p. 14). On at least a couple of occasions Moore complained of the conditions in the cell to his gallery officer, Defendant Virgil Smith. (Doc. 126-1, p. 21). However, Smith told him that he was unable to provide cleaning supplies or move him to a new cell. (Doc. 126-1, pp. 15-16).

In addition to the cleanliness issue, the overall conditions in segregation were harsher than those in general population. (Doc. 126-1, p. 9). Moore was locked in his cell for almost 24 hours a day. *Id.* Inmates in segregation do not eat in the chow hall; all of their meals are delivered to their cells. *Id.* Moore was also unable to take a shower until ten or eleven days after he entered segregation. (Doc. 126-1, p. 18). He was then allowed to take a shower twice a week. *Id.* He was also able to do minimal washing up with the water from his faucet. (*Id.*). As a result of the unsanitary conditions, Moore testified at his deposition that he developed a rash. (Doc. 126-1, p. 19). The rash was red bumps mainly on his arms and legs. (Doc. 126-1, p. 20). The rash afflicted multiple areas of his body, including his legs, which never came into direct contact with the mattress due to his jumpsuit, and eventually his sheets. (*Id.*). The rash did not subside once he got his sheets. (*Id.*). He was able to see a doctor for his rash, though there was

no discussion of the treatment he received or any physician's recommendations. (Doc. 126-1 at 21).

Moore served the full 90 days in segregation and was then transferred to general population. (Doc. 126-1, p. 9). On January 29, 2015, Moore filed this lawsuit. (Doc. 1). Shortly thereafter, Moore was granted leave to file an amended complaint (Doc. 7) and Judge Gilbert screened the amended complaint pursuant to 28 U.S.C. § 1915A. (Doc. 9). Judge Gilbert held in the screening order that the failure to call Moore's witness at the disciplinary hearing alone was not sufficient to establish a due process violation, but that if the conditions of confinement were sufficiently more severe than general population, the situation may amount to a due process violation. Moore also articulated a potential Eighth Amendment claim against Defendant Smith based on the conditions of confinement in the segregation cell. Defendant Roth was added to the Eighth Amendment claim in Moore's second amended complaint. (Doc. 93). The three Defendants now seek summary judgment. (Doc. 125).

At Moore's deposition, his testimony was largely consistent with the allegations in his written filings. Of note, he testified that he did not believe Defendants Roth or Smith intended to harm him by failing to adequately respond to his complaints about cell cleanliness. (Doc. 126-1 at 24). Moore's deposition is the only evidentiary deposition or affidavit in this case.

II. ANALYSIS

Summary judgment is appropriate when there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Carroll v. Lynch*, 698 F.3d 561, 564 (7th Cir. 2012). When presented with a motion for summary judgment the facts must be viewed in a light most favorable to the nonmoving party and all reasonable inferences are to be drawn in their favor. *Miller v. Gonzalez*, 761 F.3d 822, 826 (7th Cir. 2014) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). Summary judgment is appropriate if “on the evidence provided, no reasonable juror could return a verdict in favor of the [nonmovant].” *Ball v. Kotter*, 723 F.3d 813, 821 (7th Cir. 2013). In sum, “the court has one task and one task only: to decide, based on the evidence of record, whether there is any material dispute of fact that requires a trial.” *Waldridge v. Am. Hoechst Corp.*, 24 F.3d 918, 920 (7th Cir. 1994).

Moore proceeds on two claims in this lawsuit: that he was provided inadequate due process at the February 10, 2014 disciplinary hearing and that the conditions in the segregation cell violated his Eighth Amendment rights. Starting with Moore’s due process claim, the Fourteenth Amendment states in part, “[n]o State shall ... deprive any person of life, liberty, or property, without due process of law[.]” The Supreme Court has held that prisoners are entitled to due process protections in certain situations, such as when good time credits are revoked, *see Wolff v. McDonnell*, 418 U.S. 539, 556–57 (1974), or the prisoner is subjected to an “atypical and significant hardship,”

Sandin v. Conner, 515 U.S. 472, 484 (1995). The violation of prison procedures or the lack of due process in assigning an inmate to segregation does not constitute a freestanding constitutional violation. See *Sandin*, 515 U.S. at 485-86. Instead, a constitutional violation depends on the combination of these problems with enhanced conditions in segregation. *Id.* The “atypical and significant hardship” liberty interest often arises when an inmate is placed in segregation, or another similarly strict prison environment, for an extended period of time. See, e.g., *Marion v. Columbia Correction Inst.*, 559 F.3d 693, 698 (7th Cir. 2009) (240 day period in segregation sufficient to state due process claim); *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005) (placement in “supermax” facility triggered liberty interest); *Aref v. Lynch*, 833 F.3d 242, 257 (D.C. Cir. 2016) (placement in federal prison “communications management unit” triggered liberty interest).

“In assessing whether disciplinary segregation amounts to a constitutional violation, [the] court looks to the combined import of the duration of the segregative confinement *and* the conditions endured.” *Hardaway v. Meyerhoff*, 734 F.3d 740, 743 (7th Cir. 2013) (internal quotation omitted). The Seventh Circuit explicitly held that six months of segregation, standing alone, would not trigger due process rights. *Marion*, 559 F.3d at 698. The Seventh Circuit has not precisely defined the boundaries of atypical and significant hardships, though it has noted that considerations include human contact and access to showers and gym facilities. See *Hardaway*, 734 F.3d at 744; *but compare Wilkinson*, 545 U.S. at 224 (noting that conditions including no human

contact or conversation, 24-hour lighting and 1-hour per week gym time, in combination with indefinite duration of segregation and ineligibility for parole potentially implicated due process). Recently, the Seventh Circuit cautioned that though there is no bright line standard for assessing the ‘atypical’ nature of segregation, courts must be cautious to consider the totality of the circumstances and conditions. *See Kevin v. Barnes*, 787 F.3d 833, 835-37 (7th Cir. 2015) (citing a Fourth Circuit case, *Beverati v. Smith*, 120 F.3d 500 (4th Cir. 1997) wherein that court found that just over six months in segregation with feces smeared, vermin-infested cells did not constitute a due process violation). “[T]he right comparison is between the ordinary conditions of a high-security prison in the state, and the conditions under which a prisoner is actually held.” *Marion v. Radtke*, 641 F.3d 874, 876 (7th Cir. 2011).

The alleged lack of due process at Moore’s disciplinary hearing did not constitute a freestanding constitutional violation, so a violation only existed if the conditions imposed by segregation were “atypical and significant.” *See Sandin*, 515 U.S. at 485-86. Moreover, Moore’s confinement in segregation only lasted for 90 days—not enough to trigger automatic due process concerns. *See Marion*, 559 F.3d at 698. Moore’s due process claim therefore turns on whether his 90-day period in segregation was an “atypical and significant hardship.” This issue is complicated by the fact that courts have not established a clear, bright line standard for determining how “harsh” prison

conditions must be to constitute an atypical and significant hardship. *See Kervin*, 787 F.3d at 835-37.

Moore's deposition testimony does not create a general issue of material fact about the nature of his confinement and whether the segregation stint was more arduous than general population. He indicated that his confinement was *more arduous* than general population because he did not receive cleaning supplies on a weekly basis, and inmates in segregation spend the majority of the day (nearly 24 hours) locked in their cells. However, he conceded that after the first ten days he received his property, was able further clean the cell, and was allowed to shower twice a week in addition to using the slow water faucet in the cell. He testified that in general population inmates get cleaning supplies once a week, whereas in segregation he did not get any cleaning materials. This does present a difference in conditions, but Moore was able to mitigate the severity of this impact by cleaning the cell to the best of his ability with an extra rag. The Court does not find this unpleasantry sufficient to overcome summary judgment. Nor does the shower situation support a finding of arduous conditions because Moore did not claim that he showered more frequently or kept better hygiene in general population.

Next, as to Moore's allegation that he contracted a rash in segregation due to the dirty mattress, this condition also does not support the finding that segregation was more arduous than general population. He alleges that the rash was a result of the

unsanitary mattress because it only appeared when he was in segregation, but he has no medical or scientific evidence to support this assertion. According to his deposition testimony, he experienced a rash even on portions of his body that did not come into direct contact with the mattress, and the rash persisted even after he received his linens to cover the bed. These facts undermine the notion that the mattress was the cause of the rash. Moore also apparently received medical care for the rash, so it cannot be said that he was made to suffer excessive harm even if the mattress contributed to the condition. Moore does not allege that the mattresses were only in poor condition in segregation, or that the doctor told him the mattress or cell cleanliness caused the rash. It is a close call, but the Court is not willing to find this unpleasantry sufficient to support a due process claim because the other evidence it is coupled with is weak (a relatively short term of segregation, the existence of a hearing prior to his placement in segregation).

As to the plumbing issue—Moore was not completely deprived of running water, and he was told that there was a pending work order requiring the procurement of parts to fix the issue. He testified that in general population an inmate plumber would try to fix issues almost instantaneously, but that if that inmate was unsuccessful, then a work order of indeterminate length would be required. He also testified that a work order had been placed for the issue in his segregation cell. The plumbing issue existed before he arrived in the cell, so it is possible that the inmate repair scenario had

already taken place and that the work order was the only option. In any event, his account of the plumbing issue reveals conditions no different than those in general population. Thus, this issue does not support his due process claim.

Taking all of the conditions that Moore complained of together, the Court does not find that there is a genuine dispute of material fact regarding his due process claim. The Court does not condone the use of dirty cells, and certainly finds it advisable and preferred that the institution at least provide minimal cleaning supplies, but the Court will not find that the lack of such supplies or this dirty cell constituted a due process violation in this scenario. Thus, summary judgment is granted in favor of Defendant Hughes.

Moore's next claim is that Defendants Smith and Roth violated his Eighth Amendment rights by failing to improve the conditions in the segregation cell. Under the Eighth Amendment, prisoners have a right to "adequate food, clothing, shelter, and medical care[.]" *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). An Eighth Amendment violation occurs when a prisoner is subject to an objectively serious deprivation resulting in the denial of "the minimal civilized measure of life's necessities," and the defendant prison officials were deliberately indifferent to the prisoner's situation. *Id.* at 834. A conditions-of-confinement claim is a two-part inquiry into the objective seriousness of the condition, and the subjective behavior of the defendants in addressing the condition. *See Jackson v. Duckworth*, 955 F.2d 21, 22-23 (7th Cir. 1992).

Here, the facts presented are similar to another prisoner civil rights case in that both cells were in a state of disrepair, *Vinning-El v. Long*, 482 F.3d 923 (7th Cir. 2007). The *Vinning-El* plaintiff spent six days in a segregation cell where “[t]he floor of the cell was covered with water, the sink and toilet did not work, and the walls were smeared with blood and feces.” *Id.* at 924. The plaintiff was also denied a mattress, sheets, toilet paper and any other personal property. *Id.* The District Court initially granted the Defendants summary judgment on the basis of qualified immunity, but the decision was reversed on appeal. *Id.* The Seventh Circuit held that it was clearly established in 2001 (the date when the plaintiff was placed in the segregation cell) that such conditions were sufficient to demonstrate an Eighth Amendment violation. *Id.* at 925.

Defendants Roth and Smith argue that they are entitled to summary judgment because the conditions in Moore’s segregation cell were not objectively serious. However the conditions in Moore’s segregation cell were similar to those presented in the aforementioned *Vinning-El* matter in so much as the walls were apparently dirty and the plumbing was not fully functional. Although Moore’s segregation cell was not quite as bad as the cell in *Vinning-El* (who suffered standing water and no functional plumbing), Moore was subject to the conditions for a longer period of time. Moore spent approximately ten to eleven days without his personal property as part of the full 90 days. The plaintiff in *Vinning-El* only spent six days in segregation.

Additionally, Defendants Roth and Smith argue that summary judgment is proper because he has not provided “verifiable medical evidence showing he suffered from an objectively serious risk to health.” Moore testified at his deposition that he developed a rash soon after arriving at the segregation cell, which he asserts was caused by the cell’s filthy conditions. It would have been preferable if Moore had submitted evidence from a medical expert to support his allegation that the cell conditions were dangerous to his health. But, Moore presents a “common-sense link” that he suffered physical harm due to his conditions of confinement. *See Gray v. Hardy*, 826 F.3d 1000, 1007 (7th Cir. 2016). When a prisoner complains of a simple ailment, the prisoner’s own testimony of cause and effect is generally sufficient to survive summary judgment. *See Id.* (summary judgment was denied for prison official when prisoner presented his own testimony that dusty cell exacerbated his asthma). These facts weigh marginally in favor of allowing the claims against Roth and Smith to proceed beyond summary judgment. However, there is a critical distinction.

In *Gray v. Hardy*, the Seventh Circuit noted that an inmate must do more than demonstrate a triable issue of fact with respect to the conditions he faces; he must also show that he suffered some cognizable harm from the unsanitary environment, and that the deliberate indifference caused that harm. *See Gray*, 826 F.3d at 1007. “The subjective component of unconstitutional ‘punishment’ is the *intent* with which the acts or practices constituting alleged punishment are inflicted.” *Jackson*, 955 F.2d at 22. The

circumstances must suggest that the prison official actually wants the prisoner to suffer harm. *Id.* At Moore's deposition, the following exchange took place:

Attorney: Do you know if Christopher Roth wanted you to actually suffer harm, if he wanted to cause harm to you I suppose?

Moore: Deliberately?

Attorney: Yes.

Moore: I don't—I don't—I don't think so.

Attorney: What about Virgil Smith?

Moore: No, I don't think so. I think there were just lazy, didn't want to do their job.

(Doc. 126-1 at 24). Thus, by Moore's own admissions Roth and Smith's conduct did not amount to deliberate indifference or a subjective intent to cause him harm. What is more, had they intended to harm him they likely would have tried to prevent him from getting medical care for the rash. The issue of medical care also weighs against the conclusion that the filth of the cell caused him harm because Moore stated that he got medical care for the rash (and he did not complain the care was inadequate) but that medical care did not include any recommendation that the rash was the result of a dirty cell or that improving cell cleanliness would alleviate the condition. An examination of the totality of the circumstances leads this Court to conclude that the unpleasant conditions of Moore's cell are insufficient to state a claim for deliberate indifference to poor conditions of confinement against Defendants Roth and Smith.

Additionally, Defendants Roth and Smith also argue that they are entitled to summary judgment on the basis of qualified immunity. The Court need not reach this specific issue based upon the analysis above.

III. CONCLUSION

Summary judgment is hereby **GRANTED** for Defendants Robert Hughes, Christopher Roth and Virgil Smith. As no claims remain for trial, the Clerk is **DIRECTED** to enter judgment accordingly.

IT IS SO ORDERED.

DATED April 4, 2017.

s/ Michael J. Reagan _____

MICHAEL J. REAGAN

Chief Judge

United States District Court