

1
2 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

3
4 RONALD HOLTZ,

5 Plaintiff,

6 v.

7 JOELLA PHILLIPS, Physician
8 Assistant; PETER BECK, MSW, M-Div,
9 Mental Health Program Manager;
10 WASHINGTON DEPARTMENT OF
11 CORRECTIONS, SECRETARY BERNARD
12 WARNER, ACTING ASSISTANT SECRETARY
13 KEVIN BOVENKAMP, DEPUTY DIRECTOR
14 SCOTT R. FRAKES, (DOC)
15 MANAGER/MEDICAL DIRECTOR ROY
16 GONZALEZ, (DOC) HEALTH CARE
17 MANAGER MARY JOE CURREY, COYOTE
18 RIDGE CORRECTIONS CENTER,
19 SUPERINTENDENT JEFFREY UTTEHT,
20 HEALTH CARE MANAGER DARREN
21 CHLIPALA, DR. B. RODRIGUEZ,
22 PSYCHIATRIST DR. MICHAEL REZNICEK,
23 WASHINGTON STATE PENITENTIARY,
24 SUPERINTENDENT, STEVEN SINCLAR,
25 MEDICAL DIRECTOR JAMES EDWARDS,
26 DR. F. SMITH, MENTAL HEALTH
PHYSICIAN MELANIE HOWARD, AMERICAN
DISABILITIES SPECIALIST HOLLY
DE/CAMBRE (DOC), in official and
individual capacities, CHIEF
MEDICAL OFFICER G. STEVEN HAMMOND,
PH.D.,

Defendants.

No. CV-14-5018-EFS

**ORDER DENYING MOTIONS AND
DIRECTING DOC TO FILE ADDITIONAL
MEDICAL DOCUMENTATION WITH REGARD
TO PLAINTIFF AND ORDERING
DELIVERY OF PLAINTIFF'S LEGAL
MATERIALS WITHIN THIRTY DAYS OF
TRANSFER**

22 On May 20, 2014, a telephonic scheduling conference was held,
23 during which four motions held in abeyance were discussed and a trial
24 date was set. Plaintiff Ronald Holtz participated pro se, while
25 Defendant Washington State Department of Corrections (DOC) was
26

1 represented by Joseph Edwards from the Attorney General of
2 Washington's Office.

3 Previously, during a motion hearing on May 6, 2014, the Court
4 heard argument on a variety of motions. On May 8, 2014, the Court
5 issued an Order holding four motions in abeyance pending the Court's
6 review of documentation submitted by DOC regarding the transfer of
7 Plaintiff to the Washington Corrections Center (WCC) in Shelton,
8 Washington. The Court wanted to ensure that Plaintiff's transfer was
9 not an act of bad faith by DOC before ruling on certain matters. The
10 Court finds that DOC did not act in bad faith in transferring
11 Plaintiff to WCC and, for the reasons that follow below, the Court
12 denies the four motions held in abeyance. The Court also directs DOC
13 to submit new documentation with regard to the Plaintiff's need for a
14 medical wedge. The Court also orders DOC to provide Plaintiff with
15 his required legal materials within thirty days of his transfer to
16 WCC.

17 **I. PLAINTIFF'S REQUEST TO COMPEL TRANSFER TO MONROE CORRECTIONAL**
18 **COMPLEX**

19 During the hearing, the parties first discussed Plaintiff's
20 request that the Court compel his transfer to the Monroe Correctional
21 Complex (MCC). This request arose from Plaintiff's Motion for
22 Temporary Restraining Order, ECF No. 49. The Court sought
23 clarification regarding what Plaintiff was requesting in this motion
24 during the May 6, 2014 hearing, and interpreted the motion for a
25 temporary restraining order to be a motion to compel Plaintiff's
26 transfer to MCC. Because the documentation submitted by DOC contains

1 no indicia of bad faith or malicious intent, the Court has no basis to
2 channel Plaintiff to MCC rather than WCC.

3 It is well settled that "an inmate has no justifiable
4 expectation that he will be incarcerated in any particular prison
5 within a State." *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983). And
6 the State of Washington has granted the Secretary of Corrections
7 complete discretionary authority to transfer prisoners among
8 facilities "[w]henver in its judgment the best interests of the state
9 or the welfare of any prisoner confined in any penal institution will
10 be better served by his or her transfer." RCW § 72.68.010. Without a
11 solid foundation on which to proceed, this Court will not interfere
12 with DOC's lawful use of its discretionary powers.

13 Rather than assert any factual basis for his request, Plaintiff
14 points to the unknown. He states "no one knows what awaits me, will I
15 suffer worse circumstances, be subject to more retaliation." ECF No.
16 49-1 at 1. In attempting to compel his transfer to MCC, Plaintiff
17 assumes the existing record before the Court establishes the need for
18 the Court to intervene in his transfer. But the Plaintiff's motion
19 does not establish that he faces any imminent harm because of this
20 transfer. Nor does the Plaintiff provide any factual record that
21 proves there was foul play or punitive intent with regard to the
22 transfer decision. He offers no indication that DOC has overstepped
23 its discretionary authority.

24 The Court recognizes that Plaintiff has minimal access to
25 internal DOC documentation regarding his transfer, so he has limited
26 means to establish malicious intent or bad faith behind the transfer.

1 However, the Court accounted for this inequity by ordering DOC to
2 submit a documentary record regarding Plaintiff's impending transfer
3 to WCC. The Court reviewed this record, ECF Nos. 75 & 76, in
4 combination with the pre-existing record. Based on this review, the
5 Court finds that the documentation merely describes an administrative
6 process whereby the Plaintiff was deemed to qualify for certain
7 programs at WCC, while not qualifying for certain programs at MCC; the
8 documentation gives no appearance of a bad faith transfer.

9 Rather, the factual record before the Court suggests that
10 Plaintiff's transfer away from the Washington State Penitentiary (WSP)
11 in Walla Walla is appropriate. The Court has listened to Plaintiff
12 and thoroughly read the record; it is clear that Plaintiff desires a
13 transfer in order to be closer to an HIV specialist. It is equally
14 clear that Plaintiff does not wish to remain at WSP. At WCC,
15 Plaintiff will be closer to an HIV specialist, and he will no longer
16 be burdened by the myriad troubles allegedly tied to his incarceration
17 at WSP. The Court will not restrain Plaintiff's transfer, and his
18 request under ECF No. 49 is denied.

19 **II. PLAINTIFF'S REQUEST FOR TEMPORARY RELIEF AND OTHER MOTIONS TIED**
20 **TO THIS REQUEST**

21 Because the transfer will proceed as planned, another matter in
22 abeyance, Plaintiff's Motion for Prospective Temporary Injunctive
23 Relief, ECF No. 7, is likewise denied. The motion makes two general
24 requests: 1) a transfer for better HIV treatment and 2) more
25 responsive treatment of Plaintiff's other medical problems. To obtain
26 preliminary relief, Plaintiff must establish 1) he is likely to

1 succeed on the merits, 2) he is likely to suffer irreparable harm in
2 the absence of preliminary relief, 3) the balance of equities tips in
3 his favor, and 4) preliminary relief is in the public interest. See
4 *Winter*, 555 U.S. 7, 20. Under the Ninth Circuit's "sliding scale"
5 approach, these elements are "balanced, so that a stronger showing of
6 one element may offset a weaker showing of another." *Alliance for the*
7 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The
8 Plaintiff does not establish any of these elements in the record, and
9 the Court sees no indication that the Plaintiff would be able to
10 establish any of these elements in a motion hearing. But even if the
11 elements were established by Plaintiff, the Court sees no need to hold
12 a hearing on Plaintiff's motion for preliminary relief because the
13 Court finds that Plaintiff's transfer to WCC renders moot the relief
14 requested in this motion. However, there is some disagreement over
15 the true nature of the relief requested.

16 **A. A Transfer for Better HIV Treatment**

17 In Plaintiff's Motion for Temporary Restraining Order, ECF No.
18 49, he states that the relief requested has always been a transfer to
19 MCC with "disease control doctor D. Lopez-DeCastilla and [the] mental
20 health transitional programs [available at MCC]." ECF No. 49-1 at 1.
21 In the May 6, 2014 hearing, Plaintiff also stated that MCC has been
22 the object of his requested relief all along. However, his assertions
23 as to the narrowness of his requested relief are not supported by the
24 record. Plaintiff has always noted the Monroe Correctional Complex as
25 an option. ECF No. 7. But Plaintiff has more generally sought a
26 transfer to "Western Washington" - presumably any facility in western

1 Washington - in order to receive more frequent care from Dr. Lara
2 Strick, Plaintiff's disease control specialist who is based in western
3 Washington. ECF No. 3 at 31; ECF No. 7-1 at 3. Thus, Plaintiff seems
4 to present a moving target with regard to the relief requested in his
5 Motion for Prospective Temporary Injunctive Relief, ECF No. 7. After
6 reviewing the record, the Court finds that it is reasonable to accept
7 the more general request for a transfer to a western Washington
8 facility as the focus of Plaintiff's motion.

9 Even though Plaintiff does not receive the exact relief he
10 desires, the Court finds that a transfer to WCC achieves the more
11 general and more important goal of moving Plaintiff away from WSP to a
12 facility where he will receive more regular treatment from an HIV
13 specialist. Dr. Strick makes monthly visits to WCC, while she only
14 visits WSP once every three months. ECF No. 66 at 3; ECF No. 22.
15 Furthermore, as discussed *supra*, the Court will not interfere with
16 DOC's lawful use of its discretionary powers; Plaintiff does not have
17 a right to be transferred to a facility of his choosing. *Olim*, 461
18 U.S. at 245. Thus, the prong of Plaintiff's Motion for Prospective
19 Temporary Injunctive Relief, ECF No. 7, that requests a transfer for
20 better HIV treatment is denied as moot because it is being fulfilled.

21 **B. The Need for Better Medical Treatment in General**

22 Ancillary to Plaintiff's request for a transfer is Plaintiff's
23 request for removal from immediate physical harm relating to his
24 allegedly poor healthcare treatment. He generally asks the Court to
25 order better, more responsive healthcare treatment. Because Plaintiff
26 will be treated by different healthcare providers at WCC, it is not

1 clear whether the alleged threat of harm from poor healthcare
2 treatment will persist. The alleged harm came under the care of WSP
3 staff. With new staff, the specific harm complained of will no longer
4 be an issue. However, Plaintiff also complains of a general
5 institutional harm arising from DOC indifference and lack of
6 responsiveness to Plaintiff's medical needs. While this general harm
7 may be present at WCC, it is unclear whether this general harm will
8 persist in a new facility with new administration and new programs.
9 The Court has no basis for ordering more responsive treatment because
10 there is no record of treatment at WCC. In the eyes of the Court, the
11 record that does exist with regard to Plaintiff's treatment neither
12 establishes specific harm resulting from poor healthcare treatment nor
13 general harm resulting from DOC indifference. To the contrary, the
14 Court finds that the record reflects regular and timely responses by
15 DOC to the Plaintiff's medical needs. The Court cannot grant relief
16 on phantom harm. To the extent that Plaintiff's Motion for
17 Prospective Temporary Injunctive Relief, ECF No. 7, requests the Court
18 to order more responsive medical treatment, the motion is denied as
19 moot.

20 Beyond the general concerns, Plaintiff makes a very specific
21 request with regard to his healthcare treatment; he requests a medical
22 wedge for use while sleeping. This wedge props him up and allegedly
23 minimizes damage to his esophagus resulting from acid and indigestion
24 issues. According to the record, a wedge must be prescribed by prison
25 medical staff and issued by the prison property department; it appears
26 to be a process with numerous administrative hurdles. The WSP medical

1 staff determined that multiple blankets could serve as a replacement
2 wedge. The record before the Court does not sufficiently establish
3 imminent danger from having blankets in the place of a wedge. Thus,
4 this element of requested relief enters the same haze of uncertainty
5 as the general request for better healthcare treatment - where there
6 is no clear danger, there is no clear relief from that danger.

7 However, because the record reflects that Plaintiff has been
8 prescribed a medical wedge in the past, the Court is concerned that
9 Plaintiff may indeed need access to this medical instrument. As a
10 result, the Court orders DOC to submit documentation detailing: 1) the
11 medications Plaintiff is receiving for his esophageal problems, 2) the
12 frequency of the medication use, 3) whether Plaintiff will have access
13 to a medical wedge at WCC, and 4) if the Plaintiff will not have
14 access to a medical wedge at WCC, the reasoning behind the denial of
15 access. This documentation must be submitted no later than Thursday,
16 June 19, 2014.

17 Ultimately, Plaintiff's transfer either grants his requested
18 relief or disarms any alleged threats of immediate harm from poor
19 medical treatment. Furthermore, the Court has ordered DOC to explain
20 the only alleged threat that is remotely established in the record -
21 Plaintiff's lack of access to a medical wedge. This alleged threat
22 will be evaluated by the Court *in camera* once DOC submits the ordered
23 documentation, and the Court will determine whether an Order directing
24 DOC to provide Plaintiff with a wedge is necessary. Accordingly, the
25 Court denies the entirety of Plaintiff's Motion for Prospective
26 Temporary Injunctive Relief, ECF No. 7, as moot.

1 Additionally, because the motion for preliminary relief is
2 denied and there will be no hearing on this motion, the Court need not
3 determine whether the hearing should be in-person. Thus, Plaintiff's
4 Motion/Request for an In-Person Hearing, ECF No. 30, and Plaintiff's
5 Motion Supplementing Plaintiff's Motion/Notice of Request for an In-
6 Person Hearing, ECF No. 61, are denied as moot.

7 Finally, because of concerns over Plaintiff's access to legal
8 materials that sparked extensive motions practice earlier in this
9 case, the Court wants to ensure that Plaintiff will have access to his
10 legal materials within a reasonable time after his transfer.
11 Plaintiff also voiced his distress over losing access to his
12 phonebook, which allegedly contains information pertinent to
13 Plaintiff's legal proceedings. Thus, the Court orders DOC to provide
14 Plaintiff with his required legal materials and his phonebook within
15 thirty days of his transfer to WCC.

16 A separate Scheduling Order will be issued with regard to the
17 trial date and deadlines associated thereto.

18
19 For the above-given reasons, **IT IS HEREBY ORDERED:**

20 1. Plaintiff's request that the Court compel his transfer to MCC
21 arising from the Court's interpretation of Plaintiff's Motion
22 for Temporary Restraining Order, **ECF No. 49**, is **DENIED**.

23 2. Plaintiff's Motion for Prospective Temporary Injunctive
24 Relief, **ECF No. 7**, Plaintiff's Motion/Request for an In-Person
25 Hearing, **ECF No. 30**, and Plaintiff's Motion Supplementing
26

1 Plaintiff's Motion/Notice of Request for an In-Person Hearing,
2 **ECF No. 61**, are **DENIED AS MOOT**.

3 3. By **Thursday, June 19, 2014**, DOC shall submit documentation
4 detailing: 1) the medications Plaintiff is receiving for his
5 esophageal problems, 2) the frequency of the medication use,
6 3) whether Plaintiff will have access to a medical wedge at
7 WCC, and 4) if the Plaintiff will not have access to a medical
8 wedge at WCC, the reasoning behind the denial of access.

9 4. DOC shall provide Plaintiff with his required legal materials
10 and his phonebook within thirty days of his transfer to WCC.

11 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
12 Order and forward a copy to Plaintiff and counsel.

13 **DATED** this 26th day of May 2014.

14
15 _____ s/Edward F. Shea _____
16 EDWARD F. SHEA
17 SENIOR UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26