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7-14-2020

## Andrew McCormick v. Furda

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-3488

ANDREW MCCORMICK,  
Appellant

v.

OFFICER FURDA; OFFICER MILLER;  
OFFICER LCHE; OFFICER WALERS

(W.D. Pa. No. 3-16-cv-00049)

Present: CHAGARES, PORTER and FISHER, Circuit Judges

JUDGMENT ORDER

The parties' joint motion for summary action is granted.

With respect to Appellant's First Amendment retaliation claim against Officer Furda, the District Court's grant of summary judgment is affirmed.

With respect to Appellant's Eighth Amendment excessive force claims against Officers Furda, Miller, Lohr, and Walerysiak, the District Court's judgment is reversed and the cause is remand for further proceedings on those claims.

It is noted that the parties have agreed they may take additional discovery on remand. The parties have further agreed, without limiting the scope of discovery on remand, Appellant shall be permitted to depose all Defendants, and Defendants agree to produce their disciplinary files, subject to any applicable objections as to privileges or redactions for privilege or personally identifiable information, to the extent the files are in the Commonwealth of Pennsylvania's, the Department of Corrections', and/or the Defendants' possession, custody, and control. The parties have further agreed that on remand, no party may seek summary judgment with respect to the Eighth Amendment claims against Officers Furda, Miller, and Lohr, but may seek summary judgment with respect to the Eighth Amendment claim against Officer Walerysiak.

Appellant's appeal with respect to the District Court's denial of his requests for appointment of counsel is dismissed as moot, as pro bono counsel has indicated his intent to representation on remand.

The Clerk shall issue the mandate forthwith.

By the Court,

s/ David J. Porter

Circuit Judge

ATTEST:

s/ Patricia S. Dodszeit

Clerk of Court

Dated: July 14, 2020

cc: All Counsel of Record