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8-7-2020

## Dale McNeill v. Donald Snow

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-3936

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DALE KEVIN MCNEILL,  
Appellant

v.

DONALD SNOW;  
WARDEN STEVEN WESLEY;  
CONNECTIONS CSP INC.

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On Appeal from the United States District Court  
for the District of Delaware  
(D.C. Civil Action No. 1:16-cv-00757)  
District Judge: Honorable Colm F. Connolly

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Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or  
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

June 18, 2020

Before: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

(Opinion filed: August 7, 2020)

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OPINION\*

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PER CURIAM

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Pro se appellant Dale McNeill, an inmate at the Howard R. Young Correctional Institution in Wilmington, Delaware (“HRYCI”), appeals the District Court’s order granting summary judgment in favor of two defendants and sua sponte dismissing his claims against a third and final defendant in this 42 U.S.C. § 1983 action. Because this appeal does not present a substantial question, we will summarily affirm.

In his complaint, McNeill alleged that defendant Donald Snow, a fellow inmate, brutally assaulted him while non-party guards watched the assault, without intervening. McNeill also alleged that defendant Steven Wesley, the former warden of HRYCI, failed to intervene to stop the assault, and that the assault was the result of a policy of overcrowding inmates by placing aggressive and mentally-ill inmates with inmates suffering from medical conditions, such as McNeill, who has sleep apnea. Finally, he alleged that defendant Connections Community Support Programs, Inc. (“Connections”), a medical provider within the Delaware prison system, provided him with constitutionally deficient medical care for his resultant injuries and medical issues, including ongoing concussions. McNeill brought claims for failure to protect and deliberate indifference, in contravention of the Eighth Amendment.

Defendants Wesley and Connections moved separately for summary judgment. In response, McNeill filed oppositions and his own motions for summary judgment, in which he expanded upon his allegations, but submitted no evidence. On December 5, 2019, the District Court granted summary judgment in favor of defendants Wesley and

Connections, and sua sponte dismissed defendant Snow as non-state actor under § 1983. McNeill timely appealed and in this Court has filed a document in support of his appeal.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over a grant of summary judgment. Groman v. Twp. of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). Summary judgment is proper where, viewing the evidence in the light most favorable to the nonmoving party and drawing all inferences in favor of that party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Kaucher v. County of Bucks, 455 F.3d 418, 422–23 (3d Cir. 2006). We may summarily affirm if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

To begin, the District Court did not err in dismissing defendant Snow, McNeill’s fellow inmate, as a non-state actor. A private party can qualify as a state actor under § 1983 only when there “is a sufficiently close nexus” between the state and the private party’s conduct. Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir. 1993) (citation omitted). McNeill did not allege any such nexus between Snow and HRYCI officials.

With regard to defendant Wesley, the District Court correctly found that there was no evidence indicating that he was present during McNeill’s assault, or personally involved. Although McNeill alleged that Wesley was responsible for a policy that led to dangerous overcrowding where aggressive and mentally ill inmates were housed with inmates suffering from medical conditions, he submitted no evidence to support these

allegations. Jutrowski v. Twp. of Riverdale, 904 F.3d 280, 291 (3d Cir. 2018) (“[I]n the face of a motion for summary judgment, a § 1983 plaintiff must produce evidence supporting each individual defendant’s personal involvement in the alleged violation to bring that defendant to trial.”).

Finally, the District Court properly dismissed the deliberate-indifference claim against Connections. The Eighth Amendment prohibits prison officials from being deliberately indifferent to an inmate’s serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104 (1976). “To act with deliberate indifference to serious medical needs is to recklessly disregard a substantial risk of serious harm.” Giles v. Kearney, 571 F.3d 318, 330 (3d Cir. 2009) (citations omitted). Allegations of mere negligent treatment or even medical malpractice do not trigger the protections of the Eighth Amendment. See Estelle, 429 U.S. at 105-06. Furthermore, a prisoner’s medical treatment is presumed to be proper “absent evidence that it violates professional standards of care.” Pearson v. Prison Health Serv., 850 F.3d 526, 535 (3d Cir. 2017) (citation omitted). A prisoner’s disagreement with the course of treatment does not create an actionable constitutional violation. See Monmouth Cty. Corr. Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987). Here, as the District Court carefully explained, the record evidence demonstrates that McNeill received continuous and ongoing medical treatment for his injuries and lingering medical issues. McNeill failed to submit evidence demonstrating that the medical treatment decisions fell below any profession standards of care. Rather, his allegations amounted to disagreements in treatment, and are therefore not actionable.

Finding no substantial question raised by this appeal, we will summarily affirm the District Judge's order. 3d Cir. LAR 27.4 and I.O.P. 10.6.