

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ALGENONE WILLIAMS,

Plaintiff,

OPINION AND ORDER

v.

02-C-0010-C

GERALD BERGE, in his  
individual and official capacity,

Defendant.  
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This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Algenone Williams, an inmate at Wisconsin Secure Program Facility in Boscobel, Wisconsin, alleges that in violation of his right to be free from cruel and unusual punishment under the Eighth Amendment (1) he has been exposed to extreme cell temperatures that caused muscle deterioration and hand tremors and (2) that 24-hour cell illumination coupled with bed checks every 30 minutes caused sleep deprivation and constant headaches. Plaintiff also alleges that defendant intentionally inflicted these conditions on him, causing emotional distress.

Presently before the court is defendant's motion for summary judgment, which

plaintiff does not oppose. Because the undisputed facts support defendant's motion for summary judgment, I will grant the motion as to all claims. Because I will grant defendant's motion for summary judgment, I will deny as moot defendant's motion for judicial notice of the affidavit of Samuel Nelson (pertaining to illumination tests) filed in this court in Cherry v. Litscher, case no. 02-C-0071-C.

From defendant's unopposed proposed findings of fact and the record, I find the following facts material and undisputed.

#### UNDISPUTED FACTS

Plaintiff Algenone Williams is an inmate at the Wisconsin Secure Program Facility located in Boscobel, Wisconsin. Defendant Gerald Berge is the warden at the prison.

From October 9, 2000, to July 8, 2002, the prison took random, weekly temperature measurements that were recorded in a log book. The measurements included taking readings in the hallway and in an empty cell. In the cell, temperatures were taken at both vent and bed height. The data collected indicates that the temperature at the vent occasionally went as low as 66.2 to 69.0 degrees and the temperature at bed height was generally in the mid-70 degree range between October through April during 2000-01 and 2001-02. Generally, the hallway temperature was 1/10 of one degree warmer than the cell temperature. Staff gave additional blankets to inmates who complained about cold cell temperatures.

From July 1 through September 14, the prison allows inmates to take additional showers. During that time period, the prison lowers the water temperature to allow inmates to cool themselves off and to avoid an increase in humidity; inmates receive athletic shorts. During the summer of 2002, the prison revised its food service menu to reflect the hot weather.

Because of security concerns and the need to protect the welfare of the inmates, prison officials must check on inmates at unpredictable intervals several times each night. Staff must insure that inmates are in their cells, not making weapons, not trying to escape and not attempting suicide or trying to harm themselves. In order to perform this nighttime monitoring, staff must have a light source by which to observe the inmate. Any incidental lighting such as moonlight or hallway lighting that reaches the cells is insufficient for this purpose.

In order to monitor inmates properly, prison officials must be able to see a portion of an inmate's skin at all times. Staff will awaken an inmate only if he does not have skin showing. Staff will not wake an inmate if it is clear that he is in his bed. Inmates are allowed to cover their eyes with a towel, washcloth or t-shirt while sleeping as long as some skin remains exposed.

During 1999, 2000 and most of 2001, the nightlight consisted of a 7-watt, twin tube fluorescent light mounted in the center of the ceiling. Near the end of 2001, prison officials

began replacing the 7-watt bulbs with 5-watt bulbs. All bulbs are now 5 watts. A similar nightlight system is used in the segregation unit at the Waupun Correctional Institution.

Cell checks could be made using a flashlight shined into the cell or the main light could be switch on. Both alternatives have the potential of being perceived as harassment by the inmates because staff would have the discretion as to how long to shine the light into the cell or leave the main light on. Continuous nighttime lighting avoids accusations of harassment and conflict because the officer has no discretion. Under certain circumstance, security and inmate welfare concerns require monitoring by a video camera located in the cell. Such a camera requires a continuous light source to be effective. The nightlight system was implemented before defendant arrived at the prison. Defendant does not intend to cause injury or harass any inmate by continuing to use the nightlight system.

Plaintiff did not appeal the denial of his complaint regarding bed checks every 30 minutes (SMCI-2000-14869).

Since plaintiff's arrival at the prison on May 3, 2000, medical personnel in the health services unit have seen him on 179 occasions. According to plaintiff's medical records, he has never complained that he has suffered (1) muscle deterioration or hand tremors (from extreme cell temperatures) or (2) sleep deprivation or constant headaches (from cell illumination).

## OPINION

### A. Cell Temperatures

As plaintiff is aware, I informed him at the leave to proceed stage that in order to succeed on his claim of extreme cell temperatures he would have to garner evidence of the actual temperature in his cell during the time in question and be prepared to prove that the extreme heat or cold caused him deleterious effects on his health beyond mere discomfort. Plaintiff has failed to make the necessary showing. See Schacht v. Wisconsin Dept. of Corrections, 175 F.3d 497, 504 (7th Cir.1999) (summary judgment “is the ‘put up or shut up’ moment in a lawsuit”). In fact, at this late stage of the lawsuit it is still unclear on what dates plaintiff allegedly suffered from extreme temperatures. Notwithstanding plaintiff’s own lack of evidence, the undisputed temperature measurements taken by prison officials do not indicate extreme winter temperatures that would rise to the level of an Eighth Amendment violation. See Dixon v. Godinez, 114 F.3d 640, 644 (7th Cir. 1997) (“[C]ourts should examine several factors in assessing claims based on low cell temperature, such as the severity of the cold; its duration; whether the prisoner has alternative means to protect himself from the cold; the adequacy of such alternatives; as well as whether he must endure other uncomfortable conditions as well as cold.”).

With respect to the summer months, plaintiff failed to provide any evidence in support of this claim, which he had to do in order to survive a motion for summary

judgment. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) (“plaintiff could not rest on his allegations . . . without any significant probative evidence tending to support the complaint”) (internal citation omitted). Moreover, although plaintiff alleged in his complaint that he suffered muscle deterioration and hand tremors as a result of the extreme temperatures, it is notable that he never complained of either of these ailments to medical personnel during his 179 visits to the health services unit. Defendant’s motion for summary judgment will be granted as to plaintiff’s claim of extreme cell temperatures.

#### B. Cell Illumination and Bed Checks

Plaintiff alleged in his complaint that the 24-hour cell illumination coupled with bed checks every 30 minutes made him suffer sleep deprivation and constant headaches. In plaintiff’s request for leave to proceed in forma pauperis, I noted that “[a]lthough the 24-hour illumination does not rise to the level of an Eighth Amendment violation in and of itself, petitioner alleges that prison staff wakes him every 30 minutes when he tries to sleep by covering his eyes.” Because it is undisputed that plaintiff failed to appeal the denial of his inmate complaint regarding the alleged 30-minute bed checks (SMCI-2000-14869), he has not exhausted his administrative remedies with respect to this issue. See Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 535 (7th Cir. 1999) (“suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court

lacks discretion to resolve the claim on the merits”); see also Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002) (finding that “[t]o exhaust administrative remedies, a person must follow the rules governing filing and prosecution of a claim”). Accordingly, defendant’s motion for summary judgment as to cell illumination coupled with bed checks will be granted. Again, it is worth noting that although plaintiff alleges that he suffered sleep deprivation and constant headaches as a result of the alleged cell illumination and bed checks, he never once complained of these maladies during his 179 visits to the health services unit.

Finally, because it is undisputed that defendant did not intentionally illuminate plaintiff’s cell or alter cell temperatures to inflict emotional distress, I will grant defendant’s motion for summary judgment as to plaintiff’s emotional distress claim.

#### ORDER

IT IS ORDERED that

1. Defendant Gerald Berge’s motion for summary judgment is GRANTED in all respects;
2. Defendant’s motion for judicial notice of the affidavit of Samuel Nelson filed in this court in Cherry v. Litscher, case no. 02-C-0071-C, is DENIED as moot; and

3. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 21st day of January, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge