IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHAN GILLIS,

Plaintiff,

v.

G. GRAMS, CAPT. ASHWORTH,
SGT. MORRISON, LT. JOANNE LANE,
RICK RAEMISCH and MARK ISAACSON,

Defendants.

OPINION and ORDER

09-cv-245-bbc

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In this prisoner civil rights action, plaintiff Nathan Gillis, a prisoner at the Columbia Correctional Institution, is proceeding on claims that (1) defendant Anthony Ashworth violated his right to due process and retaliated against him by filing a false conduct report against him; (2) defendants Gregory Grams and Rick Raemisch retaliated against him by ignoring his complaints about Ashworth; (3) defendants Grams and Sgt. Morrison subjected him to inhumane conditions of confinement in the DS-1 unit in violation of the Eighth Amendment; and (4) defendant Mark Isaacson destroyed his religious items, in violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act. Defendants have filed two motions for summary judgment that the parties have now

completed briefing. Because plaintiff failed to submit proposed findings of fact sufficient to put critical issues into dispute, I will grant these motions in their entirety and direct the clerk of court to enter judgment in favor of defendants.

UNDISPUTED FACTS

Generally, this court takes its facts from the proposed findings of fact submitted by both sides. In this case, plaintiff submitted two sets of proposed findings of fact along with affidavits and supporting materials. However, in his briefs, plaintiff seems to cite to facts that are not included in his proposed findings of act or defendants'. This is not the first time plaintiff has had difficulties following this court's procedures for briefing summary judgment motions; in the July 28, 2010 order in this case, I made the following statement about an earlier round of summary judgment briefing:

> Although plaintiff has failed to properly submit proposed findings of fact or responses to defendants' proposed findings of fact, he continues to assert that Ashworth filed a false conduct report and that he was not afforded his due process rights under Wolff, allegations that could defeat defendants' motion for summary judgment on this claim. It is unclear whether plaintiff misunderstands the court's procedures for filing proposed findings of fact or whether he would prefer not to submit his assertions under penalty of perjury, as required by the court. I will give plaintiff a final chance to properly submit proposed findings of fact explaining how Ashworth filed a fraudulent conduct report and how prison officials denied plaintiff his due process rights to be present at the disciplinary hearing and to call witnesses. For each proposed finding of fact, plaintiff will have to cite admissible evidence supporting that proposed finding. Each citation should be as precise as possible—to page

> numbers or paragraph numbers where possible. To assist plaintiff, I will include another copy of this court's procedures to be followed on motions for summary judgment.

Dkt. #146. In accordance with this court's procedures, I have not considered any evidentiary materials plaintiff submitted unless he has properly cited them in his proposed findings of fact or his responses to defendants' proposed findings of fact. Procedure to Be Followed on Motions for Summary Judgment, attached to Preliminary Pretrial Conference Report, dkt. #46, at I.C.1. ("The court will not search the record for evidence."); Helpful Tips for Filing a Summary Judgment Motion, attached to Preliminary Pretrial Conference Report, dkt. #46, at Tip #2 ("The court will not search the record for factual evidence. Even if there is evidence in the record to support your position on summary judgment, if you do not propose a finding of fact with the proper citation, the court will not consider that evidence when deciding the motion.").

After considering the parties' proposed findings of fact, I find the following facts to be material and undisputed, unless otherwise noted.

A. Parties

Plaintiff Nathan Gillis has been incarcerated at the Columbia Correctional Institution since his transfer there on June 21, 2007. Defendants Gregory Grams, Michael Morrison, Anthony Ashworth and Mark Isaacson work at the institution; Grams is the warden,

Morrison is a corrections sergeant, Ashworth is a corrections unit supervisor and Isaacson is a correctional officer. Defendant Richard Raemisch was Secretary of the Wisconsin Department of Corrections from September 1, 2007 to December 31, 2010.

B. Conduct Report

Defendant Ashworth was responsible for investigating a March 6, 2009, incident involving inmate Hakim Naseer and Officer Brian Neumaier. The goal of Ashworth's investigation was to determine whether Officer Neumaier acted appropriately in the manner and amount of force used during the incident. The investigation was conducted in response to concerns about the behavior of Officer Neumaier that plaintiff raised in an offender complaint as well as in other letters.

Plaintiff wrote letters about this incident to defendants Grams and Raemisch. Also, plaintiff wrote a letter to a concerned third party, Peggy Swan, who in turn contacted the Columbia County Sheriff's Department. Ashworth received a copy of these letters and conducted his investigation in cooperation with the Columbia County Sheriff's Department. Ashworth was in attendance during the staff interviews but not the inmate interviews. Ashworth received a copy of the Columbia County Sheriff's report #09-09193 before completing his investigation and reviewed it, along with the conduct report, incident reports and plaintiff's letters, as part of his investigation.

In a letter to Raemisch, plaintiff described Neumaier "sucker punching" inmate Naseer, "once with a closed fist" and three additional times "with his forearm to the back of the head." In his letter to defendant Grams, plaintiff stated, "I witnessed a guard/ Neumaier sucker punch, using closed fist, forearm, hit prisoner Hakim Naseer #416476, in his face three times." In his letter to Peg Swan, plaintiff stated, "Hakim Naseer #416476, was attacked by guard by the name of Newmaier [sic], for no reason." It also states that "Naseer suffered multiple injuries" and that "it was horrible how this guard beat Naseer."

Defendant Ashworth noted that the other witnesses characterized the incident differently in their interviews with the sheriff's department. Officer Neumaier stated that he was escorting Naseer to his cell when Naseer made disparaging remarks about Neumaier's wife and twice made a "hocking" noise by clearing his throat and turned his head toward Neumaier, as if to spit on him. Neumaier stated that he forced Naseer into the wall and applied a forearm to the back or shoulders to restrain him after Neumaier had warned him not to "hock" or spit at him. He stated also that when he pushed Naseer into the wall, Naseer's head hit the wall, giving him a laceration over his left eye.

Witness inmate Anthony D. Anderson stated that Neumaier pushed Naseer into the wall after Naseer made derogatory comments and twice made "hocking" noises. Anderson saw a cut above Naseer's eye and blood on the wall following the incident. Witness inmate Manuel R. Williams gave the same version of events as Anderson, but added that he saw

Neumaier pull Naseer's head back and push his head into the cell door three times.

From defendant Ashworth's review of the evidence, he found no witness during his investigation besides plaintiff who claimed to have seen Neumaier strike Naseer in the face, punch Naseer or otherwise strike Naseer with a closed fist. Ashworth found that the other witnesses reported consistently that, on March 6, 2009, Neumaier was escorting Naseer back to Naseer's cell, Naseer was being loud and disrespectful and was making "hocking" noises indicating that he was going to spit on Neumaier. The witnesses consistently reported that after Neumaier warned Naseer not to "hock" or spit at Neumaier, Naseer twice made a "hocking" noise by clearing his throat and then turned his head toward Neumaier, at which point, Neumaier directed Naseer into the wall and applied a forearm to the back or shoulders to restrain him. Plaintiff claimed that Naseer made no sounds and that plaintiff heard Neumaier say anything other than "stop it."

Defendant Ashworth concluded from his review of the evidence that the staff statements and incident reports, as well as the other inmate witness statements, were more credible than plaintiff. Ashworth found that plaintiff's letters to defendants Grams and Raemisch contained false allegations about Officer Neumaier.

On April 10, 2009, Ashworth issued plaintiff Conduct Report #2035055 for violation of Wisconsin Administrative Code DOC § 303.271, Lying about Staff, because plaintiff's letters to defendants Grams and Raemisch contained false allegations about Neumaier.

Plaintiff was found guilty of this charge during a disciplinary hearing on April 27, 2009, and received 240 days' program segregation. Plaintiff appealed this decision to Grams, who affirmed the decision on June 25, 2009, after considering the evidence and procedures followed at the hearing.

On April 10, 2009, plaintiff filed an inmate grievance about the conduct report, but the grievance was rejected because the disciplinary proceeding and subsequent appeals had not concluded at that point. Defendants Grams and Raemisch were not involved in rejecting the grievance.

Defendant Raemisch's office received a letter dated May 1, 2009, from plaintiff, asking for an investigation into the reasons for the issuance of the conduct report. As Secretary, Raemisch did not undertake his own investigations of inmate claims of retaliation at the institutions.

C. Conditions of Confinement

Plaintiff has been placed in disciplinary segregation ("DS-1") several times since he was transferred there in June 2007 transfer. Inmates entering DS-1 are not allowed to bring personal property with them, except for eyeglasses and a wedding ring. All regular institution clothing is removed and the inmates are issued clean underclothing, segregation pants, T-shirts, soft-soled slip-on tennis shoes, and necessary hygiene items. There are no desks and

tables in DS-1 unit cells.

1. Showers/changes of underwear

Showers are offered to all inmates two times each week on Wednesdays and Saturdays, and clean clothing is issued on all shower days. DS-1 prisoners get two changes of underwear a week.

Plaintiff has developed sores, rashes and infections on his body. On April 28, 2010, while housed in DS-1, plaintiff submitted a health service request complaining of sores on his penis and rashes in various places. Plaintiff was seen by health services unit staff on May 4, 2010. Plaintiff stated that he was using antibacterial soap even though he was aware that it was drying him out. He was given HCT 1% lotion. On May 13, 2010, plaintiff was seen by Dr. Suliene for a followup on his complaints of a rash. Dr. Suliene noted no rash. She did note 3 one-millimeter cysts present and a lesion on his scrotal skin. Dr. Suliene prescribed Doxycycline 100 mg. twice a day for 10 days. A culture was taken of the area and sentd to the laboratory for testing. On May 14, 2010, the culture tested positive for Staphylococcus species, which is a type of skin infection. Staph skin infections can be treated with antibiotics or by draining the infection. Dr. Suliene and health services unit staff continued treatment and have followed up as needed.

2. Temperature

Plaintiff states that the DS-1 unit windows let in "extremely a lot" of cold air. In the winter time, plaintiff "regularly experiences body shaking" and "teeth rattling."

Defendant Grams is not aware of cold air coming through the windows in the DS-1 building. The ventilation system is monitored and maintained by a computerized program at all times. All cells are set at 76 degrees. Whether the heat is on or the air cooling is on, the computerized ventilation system is set up to maintain the actual temperature within three degrees of the set temperature. During the short transition periods of the year when the air handler unit is not in the heating or cooling mode, the cell temperature will be close to the outside temperature in order to meet the code requirement to exchange the air in the cells 3 to 6 times an hour.

Temperature data from the last two years indicates that cell temperatures ranged between 73 and 75 degrees 90 percent of the time. The highest recorded temperature was 78 degrees and the coolest was 67 degrees. Inmates in DS-1 are provided with one blanket during the summer months and two blankets during the winter months. Also, inmates are provided with long underwear on a seasonal basis.

3. Insects

Plaintiff states that the DS-1 unit has "biting insects" that live year-round in the

mattresses and building. Plaintiff has been bitten more than 40 times and has suffered sores, rashes and infections as a result.

Defendant Grams is not aware of any insect problems in the DS-1. The prison has a contract with an outside professional exterminator vendor to inspect and spray the outside of all buildings at least once a year. Also, the prison has a monthly contract with the vendor for routine inspections of all buildings and treatments of reported problem areas.

When indoor areas of the institution submit a work order for ant activity, the vendor comes in and sprays that area. However, this is not done in actual inmate living quarters. When an inmate in segregation complains of insects in his cell, he is removed from his cell and secured in a clean cell until the problem is addressed. Under staff supervision, the inmate janitor will spray around the edges of the cell and then mop the floor to eliminate insects in the cell and prevent further insect activity.

Prison staff replace mattresses routinely if they become worn, ripped, cracked or damaged. To receive a new mattress, an inmate is to inform unit staff that he needs a new mattress. If it is determined the mattress is worn out or damaged, he will be provided a new one,. Also, if unit staff notices during a cell inspection or search that an inmate's mattress is damaged or worn out, they are authorized to provide a new mattress to the inmate. To defendant Grams's knowledge, plaintiff has not made a request for a new mattress to unit staff.

4. Mold and fungus

Plaintiff states that mold and fungi are "a constant presence in the DS-1 unit" and that it causes sore throats, rashes and breathing problems.

On April 16, 2009, defendant Grams received a letter from plaintiff complaining of a mold problem in DS-1. In his letter, plaintiff asked that Grams inspect the showers and said the mold was making him sick. Grams directed DS-1 sergeant defendant Michael Morrison to inspect the showers. Morrison inspected the DS-1 shower area and found no mold, fungus or spores.

Defendant Grams responded to plaintiff's letter on April 17, 2009, telling him that Grams had the showers in the DS-1 unit inspected by defendant Morrison and that no mold was found. Grams informed plaintiff that the cleaning of the showers is done by the DS-1 unit inmate janitor. Grams advised plaintiff that if he believed that the showers were not being cleaned correctly, he needed to bring it to the attention of staff at that time so the issue could be addressed immediately.

In February 2010, DS-1 staff again inspected the DS-1 unit in response to an inmate complaint of mold. The two inspecting staff members reported that no mold was found and that no other inmates housed in DS-1 had reported such living conditions to them. The cell-cleaning procedures were reviewed with DS-1 staff, who reported that cells were being properly cleaned and disinfected in accordance with those procedures.

Defendants are not aware of a mold, fungus or spore problem in the DS-1 building. If defendant Morrison had noticed any mold, fungus or spores in a cell or the shower area, or if an inmate had brought a problem to his attention, Morrison would have notified maintenance to correct the problem in a timely manner. If the problem had been in an inmate cell, Morrison would have removed the inmate from his cell and placed him into a clean cell until the problem was fixed.

The DS-1 shower and inmate cells are properly cleaned and disinfected regularly. Cells are cleaned by the inmate occupants on Fridays and Sundays in DS-1. Also, cells are routinely cleaned and disinfected prior to placement of another inmate into a cell. The DS-1 shower and surrounding area are cleaned by the DS-1 inmate janitor every Wednesday and Saturday after shower time.

D. Destruction of Religious Items

Defendant Isaacson conducted a search of plaintiff's cell on May 24, 2009. The parties dispute whether Isaacson rolled up a wet bath towel with plaintiff's prayer rugs and Qur'an during this search. Plaintiff states that "DS-1 unit staff have a regular practice of damaging Muslims' religious items." Plaintiff filed an inmate grievance about the May 24, 2009 incident, stating that his face towel and bath towel got wet during the cell search, reported the incident to staff and was given new towels. The grievance was rejected as

raising insignificant issues. Plaintiff appealed, stating "my religious books were stomped, or stepped on as well as boot prints on my sheet/bedding. . . . Note my prayer rug was wrapped with the wet towel." Acting on the appeal, defendant Grams affirmed the original decision.

OPINION

Under Fed. R. Civ. P. 56, summary judgment is appropriate "when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Goldstein v. Fidelity & Guaranty Ins. Underwriters, Inc., 86 F.3d 749, 750 (7th Cir. 1996) (citing Fed. R. Civ. P. 56); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). When deciding a motion for summary judgment, the judge's function is not to weigh the evidence for herself and determine the truth of the matter, but to determine whether there is a genuine issue for trial. Anderson, 477 U.S. at 249. "[I]t is the substantive law's identification of which facts are critical and which facts are irrelevant that governs." Id. at 248. All reasonable inferences from undisputed facts should be drawn in favor of the nonmoving party. Baron v. City of Highland Park, 195 F.3d 333, 338 (7th Cir. 1999). However, the nonmoving party cannot simply rest upon the pleadings once the moving party has made a properly supported motion for summary judgment; instead the nonmoving party must submit evidence to "set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2).

A. Due Process/Retaliation Claims

Plaintiff is proceeding on claims that defendant Ashworth violated his right to due process and retaliated against him by filing a false conduct report against him because he complained about Officer Neumaier's treatment of inmate Naseer. He contends also that defendants Grams and Raemisch retaliated against him by ignoring his complaints about Ashworth. Although the due process and retaliation claims overlap to a certain degree, I will discuss each claim in turn.

1. Retaliation

To maintain a First Amendment retaliation claim, plaintiff must (1) allege that he engaged in an activity protected by the First Amendment; (2) identify one or more retaliatory actions taken by defendants that would likely deter a person from engaging in the protected activity in the future; and (3) allege sufficient facts that would make it plausible to infer that plaintiff's protected activity was a motivating factor in defendant's decision to take retaliatory action. Bridges v. Gilbert, 557 F.3d 541, 555-56 (7th Cir. 2009) (citing Woodruff v. Mason, 542 F.3d 545, 551 (7th Cir. 2008).

For summary judgment purposes, defendants do not deny that plaintiff had a constitutional right to complain to the police or prison officials about Officer Neumaier's treatment of inmate Naseer or that the conduct report plaintiff received for lying about staff

would deter a person of ordinary firmness from exercising his rights. Rather, defendants argue that plaintiff cannot show that Ashworth issued him the conduct report because he complained about Neumaier, rather than because he lied.

Defendants argue that plaintiff offers no evidence suggesting that retaliation was a motivating factor in Ashworth's decision—rather, Ashworth issued the conduct report because he compared plaintiff's complaints with the other witnesses' testimony and concluded that "plaintiff's versions of the incident were inconsistent with those of other witnesses . . ." Defts.' Reply Br., Dkt. #216, at 7. Defendants state that Ashworth reviewed the evidence and concluded that Neumaier's testimony and the testimony of the inmate witnesses were more credible than plaintiff's, meaning that Ashworth believed the accounts detailing that Naseer threatened to spit on Neumaier and that Neumaier forced him into the wall to gain control over him and did not believe plaintiff's version that Neumaier "sucker punched" Naseer several times for no legitimate reason.

When a defendant presents uncontradicted evidence that a plaintiff was punished because his complaint was false rather than because he tried to exercise free speech, summary judgment must be granted in favor of defendant. Hasan v. U.S. Department of Labor, 400 F.3d 1001, 1005 (7th Cir. 2005). Plaintiff provides no evidence indicating that defendant Ashworth had retaliatory animus toward him; at most, he disagrees with Ashworth's decision to credit Neumaier's testimony and the largely corroborative testimony of the inmate

witnesses over his own testimony. Plaintiff states that his version of the incident is true but he fails to take into account Ashworth's absence when the incident took place. All Ashworth had to go on was the witnesses' testimony. At most, plaintiff can show only that Ashworth might have been mistaken in issuing him a conduct report by crediting the wrong testimony, not that Ashworth retaliated against him by filing a false conduct report. Cf. Marion v. Nickel, No. 09-cv-723-bbc (W.D. Wis. Jan. 25, 2011) (plaintiff avoided summary judgment where reliance on plaintiff's version of facts regarding incident necessarily meant that defendant falsified conduct report because defendant was at the scene of the incident and reported version of facts different from plaintiffs). Accordingly, I will grant defendants' motion for summary judgment on plaintiff's retaliation claim against Ashworth.

As for defendants Grams and Raemisch, it is unclear what plaintiff thinks they did to retaliate against him for complaining about Ashworth. Undisputed facts show that neither Grams nor Raemisch was involved in the grievance process concerning plaintiff's inmate complaint. Plaintiff alleges that defendants Grams and Raemisch "ignored him," but they did not have to respond to plaintiff's complaints instead of letting the complaint be handled by the grievance process. Burks v. Raemisch, 555 F.3d 592, 595 (7th Cir. 2009) ("Public officials do not have a free-floating obligation to put things to rights . . . . The division of labor is important not only to bureaucratic organization but also to efficient performance of tasks; people who stay within their roles can get more work done, more effectively, and

cannot be hit with damages under § 1983 for not being ombudsmen.")

Further, to the extent that plaintiff may be arguing that Grams retaliated against him by upholding the disciplinary hearing examiner's decision regarding his lying charge, it is not a violation of a prisoner's constitutional rights for a decision maker to believe an officer's statement over that of the prisoner. Rather, the prisoner must show that the decision maker shared any unconstitutional motive held by the officer. Wilson v. Greetan, 571 F. Supp. 2d 948, 955 (W.D. Wis. 2007) (hearing officer may not be held liable for retaliatory conduct report if plaintiff fails to show that hearing officer shared animus held by officer who wrote report). As stated above, plaintiff cannot even show that defendant Ashworth retaliated against him by filing the conduct report and he has not proposed any facts indicating that Grams retaliated against him. Accordingly, I will grant defendants' motion for summary judgment on plaintiff's retaliation claims against Grams and Raemisch.

2. Substantive due process

An allegation of deprivation of due process rights states a claim under both procedural and substantive due process. Black v. Lane, 22 F.3d 1395, 1402-03 (7th Cir. 1994); Kauth v. Hartford Ins. Co., 852 F.2d 951, 954 n.4 (7th Cir. 1988). Issuing false and unjustified disciplinary charges can amount to a violation of substantive due process if the charges were issued in retaliation for the exercise of a constitutional right. Black, 22 F.3d at 1402-03; see

also Cain v. Lane, 857 F.2d 1139, 1145 (7th Cir. 1988) ("'The observance of procedural formalities cannot render valid an infringement upon inalienable constitutional rights.'") (quoting Shango v. Jurich, 681 F.2d 1091, 1098 n.13 (7th Cir. 1982)). On the other hand, legitimate disciplinary charges do not violate plaintiff's right to substantive due process. Because I am granting defendants' motion for summary judgment on the underlying question of defendant Ashworth's alleged retaliation, I will grant defendants' motion for summary judgment on this substantive due process claim.

3. Procedural due process

Next, plaintiff alleges that defendant Ashworth violated his procedural due process rights by issuing him a false conduct report. Because procedural due process claims usually cannot be maintained so long as an inmate's disciplinary hearing itself provides procedural due process, it is rare that an allegation that a prison guard offered false evidence or false reports in order to implicate an inmate in a disciplinary infraction will state a claim for which relief can be granted. Hanrahan v. Lane, 747 F.2d 1137, 1141 (7th Cir. 1984). However, in the present case, plaintiff alleges that he did not receive procedural due process at his disciplinary proceeding, and neither side addresses this issue in their summary judgment submissions. (I note that plaintiff's claim against defendant Joanne Lane for due process violations at his hearing has already been dismissed because he failed to show that she was

personally involved in any deprivation. July 28, 2010 Order, dkt. #146.)

I conclude that this claim fails because plaintiff has not proposed any facts suggesting that the conduct report was "false." At most, it was the product of Ashworth's mistake in crediting Neumaier's and the inmate witnesses' testimony over plaintiff's. As stated above, Ashworth did not have firsthand knowledge of the incident between Neumaier and Naseer, distinguishing this case from a case such as Hanrahan, 747 F.2d at 1140, in which prison guards "planted false evidence to obtain a finding of guilty before a disciplinary committee." Without evidence indicating that Ashworth fabricated the report rather than writing it after considering the evidence before him, I must grant defendants' motion for summary judgment on this claim.

B. Conditions of Confinement

Plaintiff brings several conditions of confinement claims relating to defendant Grams, alleging that Grams has violated his Eighth Amendment rights by making him eat on the floor of his cell, limiting his showers and changes of underwear and subjecting him to cold temperatures and insect infestations. Also, plaintiff brings a claim against Grams and defendant Morrison for significant mold problems in the DS-1 unit.

The Eighth Amendment requires the government to "provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing,

shelter, and medical care, and must 'take reasonable measures to guarantee the safety of inmates.'" Farmer v. Brennan, 511 U.S. 825, 832 (1994) (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)). Conditions of confinement that expose a prisoner to a substantial risk of serious harm are unconstitutional. Rhodes v. Chapman, 452 U.S. 337, 347 (1981).

A conditions of confinement claim under the Eighth Amendment requires that plaintiff's allegations about the conditions satisfy a test that involves both a subjective and objective component. Farmer, 511 U.S. at 834. The objective component focuses on "whether the conditions at issue were sufficiently serious so that a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities." Townsend v. Fuchs, 522 F.3d 765, 773 (7th Cir. 2008) (internal quotations omitted). The subjective component focuses on "whether the prison officials acted wantonly and with a sufficiently culpable state of mind." Lunsford v. Bennett, 17 F.3d 1574, 1579 (7th Cir. 1994).

In prison conditions cases, the requisite "state of mind is one of 'deliberate indifference' to inmate health or safety." Farmer, 511 U.S. at 834. Deliberate indifference "implies at a minimum actual knowledge of impending harm easily preventable, so that a conscious, culpable refusal to prevent the harm can be inferred from the defendant's failure to prevent it." Dixon v. Godinez, 114 F.3d 640, 645 (7th Cir. 1997) (quoting Duckworth v. Franzen, 780 F.2d 645, 653 (7th Cir. 1985)). To meet this component, "it is not enough

for the inmate to show that the official acted negligently or that he or she should have known about the risk." Townsend, 522 F.3d at 773. Rather, "the inmate must show that the official received information from which the inference could be drawn that a substantial risk existed, and that the official actually drew the inference." Id.

1. Showers/changes of underwear/eating on floor

First, with regard to plaintiff's claims against defendant Grams for making him eat on the floor because there are no tables or about the policy limiting DS-1 inmates to two showers and two changes of underwear a week, I noted in the court's April 26, 2010 order denying plaintiff's motion for preliminary injunctive relief that these limitations did not deprive plaintiff of minimal civilized measure of life's necessities. Dkt. #47, citing Farmer, 511 U.S. at 833-34 (prison conditions may be harsh and uncomfortable without violating the Eighth Amendment's prohibition against cruel and unusual punishment); Davenport v. DeRobertis, 844 F.2d 1310, 1316 (7th Cir. 1988) ("There would be a special irony in requiring the State of Illinois to provide . . . three showers a week, when many law-abiding poor people in dilapidated public housing projects do not have working showers.") Moreover, plaintiff did not explain why he is forced to eat on the floor when he has a bed in his cell.

Now plaintiff has augmented his claims about the lack of showers or changes of underwear by stating that these limitations have caused rashes and sores, but his layperson

conclusory allegations do not show that these ailments were caused by the lack of showers or changes of underwear. He falls far short of demonstrating that these limitations exposed plaintiff to a serious risk of harm. Vasquez v. Frank, 290 Fed. Appx. 927, 929 (7th Cir. 2008) (quoting Dixon, 114 F.3d at 643 (prisoner's "conclusory allegations, without backing from medical or scientific sources" that inadequate ventilation caused him respiratory problems were insufficient to overcome summary judgment on Eighth Amendment claims)). Accordingly, I will grant defendants' motion for summary judgment on this claim.

2. Temperature

Plaintiff's next claim is against defendant Grams regarding excessively cold temperatures in his cell. Because prisoners have the right to life's necessity of adequate shelter, they also have a right to "protection from extreme cold." Dixon, 114 F.3d at 642. For Eighth Amendment claims based on low cell temperature, courts should examine several factors, 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." Id. at 644. "Cold temperatures need not imminently threaten inmates' health to violate the Eighth Amendment." Id. Taken in combination, the conditions of low cell temperature, lack of clothing and bedding may establish an Eighth Amendment violation because they have "a

mutually enforcing effect that produces the deprivation of a single, identifiable human need" such as warmth. Wilson v. Seiter, 501 U.S. 294, 304 (1991).

Plaintiff's allegations regarding the cold temperatures in his cell are very short on detail. He states that the DS-1 unit windows let in "extremely a lot" of cold air, and that in the winter time, he "regularly experiences body shaking" and "teeth rattling." Even assuming that the proposed findings of fact about plaintiff's subjective reaction to the temperatures are enough to put into dispute defendants' data showing that the coldest temperature recorded in the DS-1 unit was 67 degrees, defendants put forth undisputed facts indicating that inmates are given two blankets during the winter as well as long underwear. Given these facts, it is unclear whether plaintiff's proposed findings are enough to persuade a reasonable jury that the cold was sufficiently severe to sustain an Eighth Amendment claim.

In any case, it is undisputed that defendant Grams was unaware of cold air coming in through the windows. If Grams was not aware of the problem, he could not have been deliberately indifferent to plaintiff's suffering. Because plaintiff fails to meet the subjective component of this Eighth Amendment claim, I must grant defendants' motion for summary judgment on this claim.

3. Insects

Also, plaintiff brings a claim against defendant Grams regarding insects in his cell.

Plaintiff alleges that there are biting insects in his cell year-round living in his mattress and the building and that he has been bitten more than 40 times. The Court of Appeals for the Seventh Circuit has held that "a prolonged pest infestation, specifically a significant infestation of cockroaches and mice," may be considered a deprivation sufficient to constitute a constitutional violation. Sain v. Wood, 512 F.3d 886, 894 (7th Cir. 2008), citing Antonelli v. Sheahan, 81 F.3d 1422, 1431 (7th Cir. 1996). Defendants proposed proposed findings of fact describing the prison's efforts to combat any insect problem. They argue that "[a]n institution's regular treatment for insects and bugs usually dooms an assertion that prison conditions violate the Eighth Amendment."

However, as with plaintiff's claim about cold temperatures in his cell, it is unnecessary to parse the proposed findings of fact to determine whether plaintiff can satisfy the objective component of an Eighth Amendment conditions of confinement claim, because, again, the undisputed facts show that defendant Grams was unaware of the insect problems. Because plaintiff fails to meet the subjective component of this Eighth Amendment claim, I must grant defendants' motion for summary judgment on this claim.

4. Mold and fungus

Finally, plaintiff brings conditions of confinement claims against defendants Grams

and Morrison regarding mold in the DS-1 unit. Plaintiff's only proposed findings of fact are that mold and fungi are "a constant presence in the DS-1 unit" and that they cause sore throats, rashes and breathing problems. Defendants state that they looked into plaintiff's complaints about mold but found none. To the extent that there is a dispute about mold in the DS-1 unit, I must credit plaintiff's testimony and assume that there is mold in the DS-1 unit. However, as with plaintiff's claim about the limitations on showers and changes of underwear, even if there is mold present, plaintiff has failed to present evidence indicating that his medical problems resulted from the mold. Vasquez, 290 Fed. Appx. at 929 (quoting Dixon, 114 F.3d at 643). Earlier in this litigation, plaintiff sought to have an expert inspect the DS-1 unit for toxic mold. Dkt. ##34, 68. Defendants did not object to this request. Dkt. #75. However, at some point, plaintiff failed to make the necessary arrangements for the inspection. Without expert testimony establishing that the mold in the DS-1 unit was toxic and could have caused the health problems plaintiff said he experienced, he cannot avoid summary judgment on this claim. Accordingly, I will grant defendants' motion for summary judgment regarding mold in the DS-1 unit.

C. Destruction of Religious Property

Plaintiff brings claims under the First Amendment and the Religious Land Use and

Institutionalized Persons Act, alleging that defendant Isaacson destroyed plaintiff's religious items on May 24, 2009 by rolling up a wet bath towel with his prayer rugs and Qur'an during a cell search.

Under either the First Amendment or RLUIPA, the threshold issues are whether the prisoner has a sincere religious belief and that his religious exercise is substantially burdened by defendant's actions. Koger v. Bryan, 523 F.3d 789, 797-98 (7th Cir. 2008); Vision Church v. Village of Long Grove, 468 F.3d 975, 996-97 (7th Cir. 2006). A "substantial burden" is "one that necessarily bears a direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003); see also Koger, 523 F.3d at 798-99 (applying Civil Liberties standard to prisoner RLUIPA claim). Under the First Amendment, the religious exercise must be "central" to the adherent's belief or practice. Hernandez v. Commissioner of Internal Revenue, 490 U.S. 680, 699 (1989). Under RLUIPA, a substantial burden on *any* religious exercise triggers the statute's protections. 42 U.S.C. § 2000cc-1(a)(1)-(2).

Defendants deny that Isaacson rolled up plaintiff's religious items in a wet towel and support it with Isaacson's averment to the contrary. Plaintiff provides almost no proposed findings of fact in support of this claim. His sole proposed finding is that "DS-1 unit staff have a regular practice of damaging Muslims' religious items." Plaintiff does not propose

facts that he is a Muslim, that defendant Isaacson rolled up his prayer rugs and Qur'an or that use of his prayer rugs or Qur'an are central to his religious practice. Without these averments, plaintiff fails to create a material issue of disputed fact, which would be reason enough to grant summary judgment on these claims.

Moreover, even if I were to infer from his one extremely vague proposed finding of fact that all of the necessary facts mentioned above are true, plaintiff does not explain what happened to his religious items as a result of this incident or how the incident affected his ability to practice his religion. Defendants point out further that plaintiff could have filed an inmate grievance asking for replacements for his religious items, but his initial grievance about the issue did not even mention his religious items, instead focusing on his wet towels. Because plaintiff has not shown how he could meet any of the elements of First Amendment and the Religious Land Use and Institutionalized Persons Act claims, I will grant defendants' motion for summary judgment on these claims.

D. Remaining Motions

There are a few remaining motions in the case that I will address in turn. First, plaintiff has filed a motion for the court "to consider claims of retaliation against defendant Mark Isaacson for damaging religious materials." I will deny this motion because I have already concluded that plaintiff failed to put into dispute his allegation that Isaacson rolled

up his religious items with a wet towel.

In addition, plaintiff has filed a motion to subpoena witnesses for trial and defendants have filed a motion to set aside pretrial deadlines and the trial date. I will deny these motions as moot because I am granting defendants' motions for summary judgment on all of plaintiff's claims.

ORDER

IT IS ORDERED that

1. The motions of defendants G. Grams, Capt. Ashworth, Sg. Morrison, Lt. Joanne Lane, Rick Raemisch and Mark Isaacson for summary judgment on each of plaintiff Nathan Gillis's claims in this case, dkt. ##185, 215 are GRANTED.

2. Plaintiff's motion to have the court consider a retaliation claim against defendant Mark Isaacson, dkt. #209, is DENIED.

3. Plaintiff's motion to subpoena witnesses for trial, dkt. #232, is DENIED as moot.

4. Defendants' motion to set aside pre-trial deadlines and the trial date, dkt. #234, is DENIED as moot.

5. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 14th day of March, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge