IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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SAMUEL J. TRINIDAD,

Plaintiff,

OPINION AND ORDER

99-C-0299-C

V.

GARY R. McCAUGHTRY, Waupun Correctional Institution, JON E. LITSCHER, Wisconsin Department of Corrections, PETER HUIBREGTSE, CAPTAIN MURASKI, M. GLAMANN, DAVID HAUTAMAKI, and W. SCHULTZ,

Defendants.

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This is a civil action for monetary and injunctive relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Samuel J. Trinidad contends that defendants violated his First Amendment right to freely exercise his religion by confiscating a letter containing Muslim prayer language that he had mailed to another inmate.

Originally, this court denied plaintiff's request for leave to proceed in forma pauperis on his First Amendment claim because plaintiff had conceded that defendants based their conduct report on plaintiff's use of words that are prohibited because they are associated

with the Vice Lords gang. See Order dated Sept. 20, 1999, dkt. #5, at 7 (noting Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 878 (1990) ("[I]f prohibiting the exercise of religion . . . is not the object . . . but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended.")). The Court of Appeals for the Seventh Circuit vacated and remanded the order, stating that "the relevant question is 'whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.'" Trinidad v. McCaughtry, No. 99-4046, slip op. at 2 (7th Cir. June 26, 2000) (unpublished) (quoting Lenea v. Lane, 882 F.2d 1171, 1175 (7th Cir. 1989)). The court of appeals found that the record was "barren of the information that [the court] need[s] to ascertain whether any evidence was presented to the board in support of its apparent finding that the debated prayer language is gang-related. The record contains neither the conduct report nor the security director's approval. Thus, this claim must be remanded in order that the record can be supplemented with the necessary documents to determine whether this is 'some evidence' to support the disciplinary action against [plaintiff]." Id.

On remand, I analyzed plaintiff's claim under the Fourteenth Amendment and denied him leave to proceed, concluding that he lacked a protected liberty or property interest under Sandin v. Conner, 515 U.S. 472, 483-84 (1995). See Order dated Oct. 30, 2000, dkt. #18, at 5-6. The court of appeals reversed the Oct. 30 order, concluding that plaintiff's "claim

depends on the first amendment, not the due process clause." Trinidad v. McCaughtry, No. 01-1018, slip op. at 2 (7th Cir. June 18, 2001) (unpublished). In addition, the court of appeals reiterated its earlier position that "[a]lthough the prison apparently believes that the language was employed as a gang slogan . . . the prison must substantiate its position." Id. at 1.

On June 21, 2001, I granted plaintiff's request for leave to proceed in forma pauperis on his First Amendment claim against defendants. See Order dated June 21, 2001, dkt. #26.

Presently before the court is defendants' motion for summary judgment in which they argue that (1) confiscating plaintiff's letter was reasonably related to legitimate penological interests; (2) defendants McCaughtry, Litscher, Huibregtse, Hautamaki and Schultz had no personal involvement in the confiscation; and (3) all defendants are protected by qualified immunity. Applying the law as it has developed in cases such as O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987), and Turner v. Safley, 482 U.S. 78 (1987), I find that confiscating plaintiff's letter was reasonably related to legitimate penological interests. Accordingly, I will grant defendants' motion for summary judgment. Doing so makes it unnecessary to address whether some defendants lacked personal involvement or whether defendants are entitled to qualified immunity.

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

## UNDISPUTED FACTS

Plaintiff Samuel J. Trinidad is an inmate at the Waupun Correctional Institution in Waupun, Wisconsin, and a member of the Moorish Science Temple of America. Defendant Jon E. Litscher is Secretary of the Wisconsin Department of Corrections. Defendant Gary R. McCaughtry is Warden, Waupun Correctional Institution; defendant Captain Muraski is the supervising officer of gang activity; defendant M. Glamann is a correctional officer; defendant David Hautamaki is a security lieutenant; and defendant W. Schultz has an unspecified position. At the time of the incident in question, defendant Peter Huibregtse was the security director at Waupun.

On October 10, 1998, defendant Glamann was monitoring incoming mail for gang activity pursuant to Wis. Admin. Code § DOC 309.04. That day, defendant Glamann intercepted a letter plaintiff sent to inmate Dennis E. Jones (a/k/a Mustafa'El) because it contained the language, "My Shelter, My Strength." Plaintiff and Jones had been identified and confirmed previously as members of the Vice Lords gang.

Inmate Jones's mail was being monitored because he had previously sent mail outside the prison soliciting other gang members to commit crimes. When a mail monitor is in place

for an inmate, all incoming and outgoing mail is sent to a security director for close inspection.

Defendant Muraski is a "certified gang specialist" and co-founder of the Gang Intelligence Units at Waupun. Defendant Muraski's duties include devising, implementing, overseeing and training gang identification and management strategies. When suspected gang-related materials are found by prison personnel, they are flagged and given to defendant Muraski or another gang specialist to verify whether the materials are in fact gang-related. Defendants do not have a policy or procedure to identify or label prisoners as gang members. Defendant Muraski has access to a list of inmates whom Dodge Correctional Institution has identified as known or suspected gang members.

Defendant Glamann referred plaintiff's letter to defendant Muraski. Muraski determined that the letter was gang-related because it contained the language "My Shelter, My Strength" and because this language has no connection to the Moorish Science Temple religion, is known to identify a person as a member of the Vice Lords gang and is used to signal solidarity. Defendants believe that if left unchecked, such correspondence leads to the structuring and organizing of gangs within the institution, which, in turn, represent threats to security, orderly operation, discipline and safety of the institution. If the letter had not contained the words "My Shelter, My Strength," defendants would not have confiscated it. At Waupun, there is zero tolerance for gang-related activity.

The same day that defendant Glamann confiscated plaintiff's letter to Jones, Glamann issued plaintiff a conduct report, which reads as follows:

> On [October 10, 1998, at 2:30 p.m.], I COII M. Glamann was monitoring incoming mail going into the HSC building. This letter was written by inmate Samuel Trinidad #263964. The letter was going to inmate Dennis E. Jones #223971, who is housed in HSC. The letter starts as saying "Praise be to Allah! Father of the Universe. Father of Love, Truth, Peace, Freedom and Justice. My Strength, My Shelter." As shown in Exhibit 1, which is confiscated Vice lord literature. The five pointed star which is symbolic to the Vice lords, each point on the star represents one of the following. Love, truth, peace, freedom and justice. Exhibit 2 shows the relationship of my strength, my shelter. The top hat and cane are both symbols used by the Vice lord nation. The top hat represents shelter. The cane represents strength. Inmate Samuel Trinidad is an identified conservative Vice lord. Inmate Dennis E. Jones is also an identified member of the Vice lords. The above information was provided to me by Capt Muraski, WCI Disruptive Groups Coordinator. Inmate Trinidad was provided notice of non-delivery. The letter will be provided to the due process committee as contraband.

"Exhibit 1," which is referred to in plaintiff's conduct report, reads as follows:

> Symbols
>
> Five pointed star with one crescent means universal knowledge. Two crescent means unification with Al-Islam.
>
> Circle 7 represents a complete number within a complete circle of 360°, we draw 360° of knowledge and wisdom to understand all. There is also a 7 with four gates around it, which represents means for all lords to enter.
>
> "Establishment and number of branches" This Nation of Almighty was founded in 1951 and at this very present there are 14 strong branches of Almighty.
>
> 5 pointed Star
> L = for all brothers and sisters to have undying love for this nation

| | |
|---|---|
| T = " | " (truth)-respect for this nation |
| P = " | " Peace among self and others |
| F = " | " Freedom of speech with this nation |
| J = " | " Justice within this nation and administer Justice when Justified |

Code = Means to understand a brother and where Self is demonstrating from. To look into the brothers mind.
Black Code = To all Nations under the 5 point Almighty Star. You must help carry this nation on, You will uplift this Nation when torn down. We lords who are heads must meet with the heads to discuss our or any problems that concern this almighty nation.

[1] Code = The Vice Lords must meet and demonstrate once every month on Nation Business.

[2] Code = All Vice Lords will and must show that same and undying love to your Lord brothers Family when that brother is not in their presence. You must be there to uplift our Sisters and Brothers in those times of need.

[3] Code = Self will and must keep peace among and between all Vice Lords when taking the Oath.

If any Brother or Brothers break or disrespect the code he must be dealt with in a way that one-self will never forget. If a Brother don't show at a meet he will be put on hold until the Nation can come to an understanding about himself. In which a decision will be made to place him back in or out of this Almighty Nation.

I come as I am, I am as I come, I come Almighty Vice Lord, in Love, Truth, Peace Freedom and Justice. [Last sentence has been truncated and is unreadable]

"Exhibit 2," which is referred to in plaintiff's conduct report, contains pictorial representations coupled with descriptive words. It includes the drawings of a top hat with the words "top hat = shelter"; a cane with the words "cane = strength"; a pyramid with the

words "pyramid = strength through unity"; and a martini glass with the words "champaigne [sic] glass = conservative". See id. (A copy of Exhibit 2 is attached to this opinion.)

According to the Divine Constitution of the Moorish Science Temple of America, the Moorish American Prayer reads as follows:

> Allah the Father of the universe, the Father of Love, Truth, Peace, Freedom and Justice. Allah is my protector, my guide and my salvation by night and by day thru his Holy Prophet Drew Ali. "Amen."

On October 12, 1998, defendant Huibregtse reviewed plaintiff's conduct report, determined that the violation was a major offense because it represented a serious risk of disruption and allowed the report to proceed to the hearing stage. This was defendant Huibregtse's only involvement in the subject matter of this lawsuit.

On November 2, 1998, defendants Hautamaki and Schultz reviewed plaintiff's conduct report at his disciplinary hearing. According to the disciplinary hearing report, the following evidence was presented: plaintiff's letter; his conduct report and Exhibits 1 and 2; the written rule; defendant Muraski's credentials; the Constitution of the Moorish Science Temple of America; and the Holy Koran prayer. Relying on the evidence presented, defendants Hautamaki and Schultz found plaintiff guilty of gang activity pursuant to Wis. Admin. Code § DOC 303.20(3). The disciplinary hearing report reads as follows:

> We find the reporting officer credible. His information was verified by Capt. Muraski, the institutions disruptive group coordinator. The inmate did not present any evidence to contradict the report other than to state that he was writing about

> his religion. We do not find the inmate or his witnesses credible. Their statements all appear to have been rehearsed. "Love, truth, freedom and justice" are indicative of both the Moorish Science Temple and the unsanctioned group Vice Lords. The other phrase, "My Strength, My Shelter," is indicative only to the Vice Lords.
>
> After a review of the conduct report, the inmate statement, witness testimony and the evidence, we find that he intentionally identified himself with the inmate gang vice lord nation, by writing a letter in which he uses phrases indicative of the vice lords. The words, "Love, truth, peace, freedom and justice" each represent a point on the 5-pointed star which is indicative of the vice lords. The phrase "my strength, my shelter" is exclusive to the Vice Lord nation and represents the cane top hat symbols which are indicative of the Vice Lords.

This disciplinary hearing was defendants Hautamaki's and Schultz's only involvement in the subject matter of this lawsuit.

On November 17, 1998, defendant McCaughtry reviewed plaintiff's appeals of the adjustment committee's decision. Defendant McCaughtry determined that there were no procedural errors, the record was correct, the evidence supported a finding of guilt and the penalty that had been imposed was proper. This was defendant McCaughtry's only involvement in the subject matter of this lawsuit.

Defendant Jon Litscher had no personal involvement in this matter except to the extent that Cindy O'Donnell acted as his designee by reviewing plaintiff's inmate complaint and affirming the decision of the complaint examiner.

## OPINION

Defendants argue that confiscating plaintiff's letter to a fellow inmate was reasonably related to legitimate penological objectives because it contained known gang-related code words ("My Shelter, My Strength") that have been used by Vice Lords gang members to identify themselves as gang members and to signal solidarity. Plaintiff argues that he used this language as an expression of his Moorish Science Temple religion and he disputes defendant Muraski's knowledge of gang-related terms.

The Supreme Court recognizes that "'convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement.'" Woods v. O'Leary, 890 F.2d 883, 884 (7th Cir. 1989) (quoting O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987)). Although prisoners retain First Amendment rights while incarcerated, the exercise of such rights is limited by the fact of confinement and the needs of the penal institution. See Bell v. Wolfish, 441 U.S. 520, 545 (1979); Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 125 (1977). The Supreme Court has held that "restrictions on inmate-to-inmate communications pass constitutional muster only if the restrictions are reasonably related to legitimate and neutral governmental objectives." Shaw v. Murphy, 532 U.S. 223, 228 (2001) (citing Turner, 482 U.S. at 89). In Shaw, the Court refused to "cloak the provision of legal assistance with any First Amendment protection above and beyond the protection normally accorded prisoners' speech." Id. at 232.

"[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Turner, 482 U.S. at 89; see also O'Lone, 482 U.S. at 348 ("The limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives — including deterrence of crime, rehabilitation of prisoners, and institutional security."). Therefore, the central question is this case is whether confiscating plaintiff's letter because it contained known gang-related language was reasonably related to legitimate penological interests.

The Supreme Court has held that courts are required to give considerable deference to prison officials' adoption of policies that serve security interests. Pell v. Procunier, 417 U.S. 817, 827 (1974). A court may "not substitute [its] judgment for [prison officials'] 'in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations.'" Caldwell v. Miller, 790 F.2d 589 (7th Cir. 1986) (quoting Procunier, 417 U.S. at 827). To determine whether a prison practice is reasonable, a court must examine four factors: (1) whether a valid, rational connection exists between the regulation and a legitimate governmental interest; (2) whether the prisoner has available alternative means of exercising the right in question; (3) whether accommodation of the asserted right will have negative effects on guards, inmates or prison resources; and (4) whether there are obvious, easy alternatives at a de minimis cost. Turner,

482 U.S. 89-91; see also Thornburgh v. Abbott, 490 U.S. 401 (1989); Williams v. Lane, 851 F.2d 867, 877 (7th Cir. 1988).

In applying this test, the Court of Appeals for the Seventh Circuit has noted that "[i]t is critically important . . . that the record reveal the manner in which security considerations are implicated by the prohibited activity." Caldwell, 790 F.2d at 597. Although Caldwell was decided before O'Lone and Turner, the court of appeals has noted that these cases "have served to clarify and amplify, rather than depart from, the Caldwell standard." Williams, 851 F.2d at 877 n.6 (quoting Hadi v. Horn, 830 F.2d 779, 784 n.6 (7th Cir. 1987)). Prison officials can show how security concerns are implicated by submitting an affidavit of a person responsible for making discretionary decisions related to security matters indicating that the regulated conduct "constitute[s] a threat of potential violence or [is] disruptive of institutional security." Id. at 599. In this case, defendants submitted the affidavit of Bruce Muraski, supervising officer of gang activity at the Waupun Correctional Institution and the officer who verified defendant Glamann's suspicion that plaintiff's letter was gang-related because it contained the language, "My Shelter, My Strength." In his affidavit, defendant Muraski states that (1) both plaintiff and Jones (the intended recipient) had been identified and confirmed previously as members of the Vice Lords; (2) the words "My Shelter, My Strength," are used as a sign of solidarity among Vice Lords gang members; and (3) if left unchecked, such correspondence leads to the structuring and organizing of the gang within

the institution and represents a threat to the security, orderly operation, discipline and safety of the institution. I will examine the four factors of the Turner reasonableness test in light of defendant Muraski's affidavit.

1. Legitimate penological interests

The first Turner factor is whether a valid, rational connection exists between the regulation and a legitimate government interest. Turner, 482 U.S. at 89. Without doubt, prison officials have a right to confiscate inmate letters that contain known gang-related code words in order to prevent the formation of prison gangs. However, as the Court of Appeals for the Seventh Circuit has pointed out, "the relevant question is 'whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.'" Trinidad v. McCaughtry, No. 99-4046, slip op. at 3 (7th Cir. June 26, 2000) (unpublished) (quoting Lenea v. Lane, 882 F.2d 1171, 1175 (7th Cir. 1989)).

At this stage of the proceedings, the parties have provided the court with the conduct report, related exhibits and the disciplinary hearing report. These reports and exhibits provide more than the requisite "some" evidence of defendants' legitimate penological interest in confiscating plaintiff's letter. See Lenea, 882 F.2d at 1175 ("Prison disciplinary board conclusions must be supported by 'some evidence.'") (quoting Superintendent v. Hill, 472 U.S. 445, 454-56 (1985)). First, the conduct and disciplinary hearing reports support

defendants' rationale because they provide ample evidence that the language, "My Shelter, My Strength," signals membership and solidarity in the Vice Lords gang. Second, the supporting exhibits, which were confiscated Vice Lords' literature, further substantiate defendants' conclusion that gang-related activity was afoot. Third, it is undisputed that both plaintiff and inmate Jones are confirmed members of the Vice Lords gang. Although plaintiff disputes defendant Muraski's expertise, he has adduced no evidence that would create an actual dispute on this point.

Plaintiff argues first that the prison regulation regarding unsanctioned group literature has been held unconstitutional by the Circuit Court for Dane County, Wisconsin; he includes a copy of the unpublished opinion. See Hatch v. McCaughtry, No. 99-CV-1753 (Dane Cty. Cir. Ct. Aug. 11, 1994) (unpublished); see also Plt.'s Prop. Findings of Fact, dkt. #46, Exh. 4. However, the circuit court held explicitly that the prison rule regarding unsanctioned group literature was "unconstitutional *to the extent* that it facially and in practice prohibits inmates from simply possessing in their cells literature from unsanctioned groups." Hatch, No. 99-CV-1753, slip op. at 22-23 (emphasis added). This case differs factually because it pertains to inmate-to-inmate correspondence in which one inmate is allegedly signaling to another inmate his gang affiliation and both inmates are confirmed gang members.

For the most part, plaintiff ignores defendants' argument that they confiscated his

letter because it contained the language, "My Shelter, My Strength." Instead, plaintiff attempts to shift the focus from the gang-related words by arguing that he was exercising his religion and "praising Allah." In fact, plaintiff goes as far as arguing that "the phrase 'My Shelter, My Strength' [is] a sequence of words stated nowhere in the [conduct report]." Plt.'s Resp., dkt. #45, at 6. As the conduct report reveals, this is simply untrue. Moreover, plaintiff did more than just praise Allah; he accompanied his prayer with known gang-related code words. Specifically, plaintiff opens his letter to his fellow inmate by writing, "Praise be to Allah! Father of the Universe. Father of Love, Truth, Peace, Freedom and Justice. My Strength, My Shelter." According to the Divine Constitution of the Moorish Science Temple, the prayer reads as follows, "Allah the Father of the universe, the Father of Love, Truth, Peace, Freedom and Justice. Allah is my protector, my guide, my salvation by night and by day thru his Holy Prophet Drew Ali. 'Amen.'" As is clear, the prayer provided in the Divine Constitution of the Moorish Science Temple is devoid of the language, "My Shelter, My Strength."

Although plaintiff fails to explain in his brief how the language, "My Shelter, My Strength," is related to the Moorish Science Temple religion, he attempts to do so in a proposed finding of fact. Plaintiff asserts that the Holy Koran of Islam states in 8:26 that "He provided a safe '<u>asylum</u>' for you, '<u>strengthened</u>' you with his aid . . . that you might be grateful." Plt.'s Prop. Findings, dkt. #46, at 10 (emphasis in original). Plaintiff then cites

a thesaurus for the proposition that "asylum" is synonymous with "shelter." Id. Presumably, this proposed finding of fact is an attempt to bolster plaintiff's position that the language, "My Shelter, My Strength," is an integral part of his religion rather than gang-related code words.

Plaintiff's argument is unpersuasive for several reasons. First, as defendants point out, plaintiff's proposed finding of fact is unsupported by any evidence because he fails to provide a copy of the quoted portion of the Holy Koran or swear to it as part of his affidavit. Second, even assuming plaintiff's proposed fact were supported by admissible evidence, his quotation is far too attenuated from his religion (Holy Koran by way of a thesaurus) to rebut defendants' evidence that this language is gang-related. Third, even if plaintiff had used the language, "My Shelter, My Strength," with purely religious intentions, defendants' confiscation is still reasonably related to legitimate penological interests because such language is not clearly part of the Moorish Science Temple religion and is code for gang-related Vice Lords activity. Plaintiff simply ignores defendants' evidence that "shelter" and "strength" are code words that signify gang solidarity and instead contends that he has the right to communicate them anyway because they can be found in the Holy Koran via a thesaurus. Plaintiff is incorrect.

I conclude that defendants have provided ample evidence that confiscating plaintiff's letter is rationally connected to legitimate security concerns.

2. Alternative means of exercising right

The second Turner factor focuses on the existence of alternative means of exercising the right in question. Turner, 482 U.S. at 90. Plaintiff argues that because inmate Jones was in segregation, his only means of communicating with Jones was through the mail. Thus, plaintiff argues, he had no alternative means of communicating with Jones regarding their shared religion. Plaintiff misconstrues the Turner test. Specifically, Turner asks whether an inmate is deprived of "all means of expression." See O'Lone, 482 U.S. at 352 (citing Turner, 482 U.S. at 92.). To clarify, all means of expression is broader than just all means of expression to one inmate who is in segregation. Plaintiff has not been denied his right to practice his religion or to "praise Allah," as he argues. On the contrary, plaintiff may "praise Allah" in his correspondence to Jones or any other party, he just may not do so in conjunction with known gang-related code words, such as "shelter" or "strength." Even if plaintiff were not allowed to correspond with Jones because they are both confirmed members of the Vice Lords gang, he still would not be deprived of "all means of expression" because he could communicate with other inmates, family, friends and members of the Moorish Science Temple (assuming, of course, that he does not use gang-related code words).

3. Impact on guards, inmates or prison resources

The third Turner factor is whether accommodation of the asserted right will have negative effects on guards, inmates or prison resources. Turner, 482 U.S. at 90. Plaintiff argues that his letter does not threaten, intimidate, coerce or harass other inmates and thus he has not violated the Wis. Admin. Code § DOC 303.20 (group resistance and petitions). However, § DOC 303.20(3) states that "[a]ny inmate who participates in any activity with an inmate gang . . . or possesses any gang literature, creed, symbols or symbolism is guilty of an offense." Defendant Muraski states in his affidavit that if gang-related correspondence is left unchecked, it leads to structuring and organizing of the gang within the prison and represents a threat to security, discipline and the safety at the institution. This is the kind of decision that is within defendants' discretion. See Turner, 482 U.S. at 90 ("When the accommodation of an asserted right will have a significant 'ripple effect' on fellow inmates or prison staff, courts should be particularly deferential to the informed discretion of corrections officials.").

4. Obvious and easy alternatives

The fourth and final Turner factor is whether there are obvious, easy alternatives to achieving valid penological interests at a de minimis cost. Turner, 482 U.S. at 90. Obvious and easy alternatives may be evidence that the regulation is not reasonable and is an

exaggerated response to prison concerns. Id. However, this factor is not a "least restrictive alternative" test; prison officials do not have to set up and shoot down every conceivable alternative. Id. To support a regulation, prison officials must advance security considerations that are implicated directly by the protected activity and sufficiently articulated to permit meaningful constitutional review. Caldwell, 790 F.2d at 599. Once prison officials have satisfied this burden by introducing evidence of this nature, the court must defer to the judgment of prison officials unless the inmate can demonstrate that prison officials have exaggerated their response. Id. at 599-600. Defendants have submitted the affidavit of defendant Muraski in which he states that allowing gang correspondence threatens institution safety. Plaintiff has not adduced any evidence to demonstrate that prison officials have exaggerated their response to dealing with the formation of prison gangs.

Because defendants have shown that confiscating plaintiff's letter is reasonably related to legitimate penological interests, I will grant their motion for summary judgment. As a result, it is unnecessary to address whether some defendants lacked personal involvement or whether defendants are entitled qualified immunity.

ORDER

IT IS ORDERED that

1. The motion of defendants Gary R. McCaughtry, Jon E. Litscher, Peter Huibregtse,

Captain Muraski, M. Glamann, David Hautamaki and W. Schultz for summary judgment is GRANTED; and

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

Entered this 6th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge