

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

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BRANDEN SUSTMAN,

Plaintiff,

v.

OPINION AND
ORDER

06-C-293-C

STEVE WATTERS, Director (Sand Ridge Secure
Treatment Center); STEVE SCHNEIDER,
Security Director (S.R.S.T.C.); DAVID
THORNTON, Treatment Director, (S.R.S.T.C.);
and TIM THOMAS, Unit Manager (S.R.S.T.C.),

Defendants.

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In this civil action for declaratory, injunctive and monetary relief, plaintiff Branden Sustman, a patient at the Sand Ridge Secure Treatment Center, contends that defendants Steve Watters, Steve Schnieder, David Thornton and Tim Thomas punished him in violation of his substantive due process rights when they deprived him of access to his job, school, church services and the game room because he would not sign a statement against another patient. On December 15, 2006, defendants moved for summary judgment. That motion is presently before the court.

Before deciding defendants' motion, I note that plaintiff was given two opportunities

to dispute facts proposed by defendants and to propose facts of his own. When plaintiff failed to oppose the motion in accordance with this court's summary judgment procedures within the time established in Magistrate Judge Stephen Crocker's August 18, 2006 preliminary pretrial conference order, the magistrate judge extended plaintiff's opposition deadline in an order dated January 22, 2007. At that time, Magistrate Judge Crocker expressly warned plaintiff that if he failed to respond to defendants' proposed findings of fact as required by this court's procedures (copies of which were sent to plaintiff with both the August 18, 2006 and January 22, 2007 orders), the court would be required to accept defendants' proposed findings of fact as true and undisputed. Plaintiff has not filed a response to defendants' proposed findings of fact.

I conclude that defendants are entitled to summary judgment because plaintiff has failed to submit evidence from which a reasonable jury could find that the sanctions imposed upon him were unconstitutionally punitive and that defendants failed to exercise their professional judgment in charging him with a violation of institution rules.

From the proposed findings of facts submitted by the defendants, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

At all times relevant to this action, plaintiff Branden Sustman was a patient at the

Sand Ridge Secure Treatment Center in Mauston, Wisconsin. The center serves as the state of Wisconsin's primary institution for individuals confined "sexually violated persons" under Chapter 980 of the Wisconsin Statutes.

Defendant David Thornton is employed by the Department of Health and Social Services as the treatment director of the Sand Ridge Secure Treatment Center. He has held his position since 2001. Defendant Steven Schneider has been employed by the department as the security director for the Secure Treatment Center since February, 2001. Defendant Steven Watters has been the Director of the Secure Treatment Center since April 17, 2000, and defendant Timothy Thomas has been an institution unit supervisor there since September 2005.

Among his responsibilities as institution unit supervisor, defendant Thomas is required to establish and maintain a therapeutic setting on the housing wings. In addition, he is responsible for the treatment, security, general living conditions and all activities within assigned wings.

In his capacity as security director, defendant Schneider is responsible for planning, implementing and coordinating security services for the Secure Treatment Center. He is further responsible for overseeing institutional investigations and conducting special investigations requiring high-level administrative inquiry.

All patients who arrive at the Secure Treatment Center are given a copy of the

“Patient Handbook & Unit Rules.” Under the heading, “Sexual Behavior/Physical Contact,” the handbook states that “[s]exual interaction with anyone is not allowed within the institution.” Under the heading “Sanctions and Discipline,” the handbook explains that patients may be sanctioned through the use of counsels, warnings and behavior disposition records.

The purpose of the rule and consequences for breaking it are to manage patient behavior that is disruptive to the treatment environment. SRSTC policy number SR 477 explains that “unit rules are intended to facilitate management of the environment, safety and security, fairness in the treatment, and act as a deterrent.” Having “sexual contact with another person” is defined explicitly as a rule violation under the heading, “Sexual Conduct.” A sexual conduct rule violation is considered a “major rule infraction” because it can jeopardize the safety or security of other patients or staff and because it presents significant management difficulties.

All of the patients at the Secure Treatment Center are there because they are considered to be sexually violent under Wis. Stat. Chap. 980. Allowing such patients to have sexual contact or intercourse with other patients would present security risks and be detrimental to maintaining a therapeutically appropriate and secure environment for the patients.

On March 24, 2006, defendant Schneider received information from several other

patients that plaintiff Sustman had kissed another patient and performed oral sex on him in the “treatment mall.” Around 10:00 a.m. on that same day, Schneider interviewed plaintiff. After the interview, plaintiff provided Schneider with a voluntarily written statement, in which he said that on March 22, 2006, he was in the treatment mall when a patient, K.P., slapped him because K.P. was jealous that plaintiff had been talking to another patient. Then, in the presence of other patients, plaintiff kissed K.P. and performed oral sex on him because K.P. was mad. Plaintiff indicated that he performed these sexual acts with K.P., at least in part, because he was afraid that K.P. would slap him again.

Because plaintiff indicated that he had been coerced or intimidated into having sexual contact with K.P., defendant Schneider contacted defendant Steven Watters to report what he believed would constitute a sexual assault that would require an external investigation by the sheriff’s department. After discussing the matter, Schneider and Watters concluded that the Juneau County Sheriff’s Department must be contacted so that an investigation could be conducted and criminal charges filed if warranted. Because of the seriousness of the allegations plaintiff had made against K.P., defendant Schneider filled out a “High Profile Case Report.” Later that day, around 1:00 p.m., Detective Thomas Czys from the Juneau County Sheriff’s Department came to the Secure Treatment Center to interview plaintiff and K.P. Defendant Tim Thomas, the unit manager, sat in on this interview.

On March 31, 2006, after giving the Juneau County Sheriff's Department time to complete its investigation, defendant Schneider ordered an internal investigation into the March 22, 2006 incident involving plaintiff and K.P. On April 3, 2006, Captains Carter and Thomure investigated the incident and interviewed both plaintiff and K.P. During the investigation, plaintiff admitted to kissing K.P. on the lips and performing oral sex on K.P. while other patients were present. Captains Carter and Thomure completed their investigation report that same day. The internal investigation concluded that the sexual contact between K.P. and plaintiff was consensual and that there was no threat of force from K.P. to plaintiff to perform oral sex. The internal investigators recommended that a "Behavioral Disposition Record" be written for plaintiff and K.P. At no time during any of the investigations was plaintiff ever forced or coerced into making an untrue statement.

On April 5, 2006, defendants Thomas and Schneider discussed the incident and decided that because of its seriousness, a Behavioral Disposition Record should be issued to plaintiff as a formal sanction. On that same day, plaintiff's Behavioral Disposition Record hearing was held in front of center staff members Hannes, Richert and Conway. The committee found plaintiff guilty of the alleged conduct and imposed a sanction of loss of leisure activities at the treatment mall, music or game room and a demotion to Level 2 for thirty days.

Any public display of sexual conduct at the center implicates a number of security and management concerns. First, it may intimidate or frighten other patients or staff or it could lead other patients to engage in similar behavior. Second, it may impede the patients' treatment plans, which are designed to affect significant changes in thought processes and behavior in order to reduce the likelihood that patients will commit further acts of sexual violence. Third, it is often difficult to discern whether the conduct is consensual or forced. For these reasons, patients are not allowed to have sexual interaction with anyone.

OPINION

As I told plaintiff when I granted him leave to proceed with his claim that he has been subjected to punishment in violation of the Fourteenth Amendment, under the law governing claims brought by civilly committed persons confined to non-penal institutions who challenge the actions of state officials with respect to their treatment and care, courts must give deference to the decisions of qualified professionals, including state employees subject to the supervision of qualified persons. Youngberg v. Romeo, 457 U.S. 307, 321 (1982). Moreover, the law distinguishes between official action taken to advance legitimate institutional goals, such as insuring order, security and the safety of others, and actions taken for purely punitive reasons. Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2003). Thus,

if a patient's violations of institution rules threaten the security of the institution or others working or confined there, institution officials may exercise their professional judgment to impose sanctions so as to deter future misconduct or the misconduct of others. Liability under 42 U.S.C. § 1983 will arise only when the decision by the professional is such a departure from accepted professional judgment, practice or standards that it demonstrates that the person responsible did not base the decision on such judgment. Id. at 320.

The undisputed facts in this case show that defendants demoted plaintiff to Level 2 and sanctioned him with 30 days' loss of leisure activities at the treatment mall, music or game room because he kissed another patient and performed oral sex on him in the presence of other patients in the treatment mall. This was a violation of the institution rule prohibiting Chapter 980 patients from having sexual contact with another person. The facts reveal also that the rule is intended to insure the safety and security of other patients (that is, to prevent unwanted sexual contact as well as intimidation and fear of assaultive behavior) and to advance a therapeutically appropriate and secure environment for patients who have been adjudicated to be sexually violent persons under Wisconsin law. On these facts, defendants' decision to discipline plaintiff was not unconstitutionally punitive.

Moreover, plaintiff has failed to overcome the presumption of validity accorded to the decision of defendants Thomas and Schneider to hold him accountable for his actions.

Officials who monitor involuntarily committed individuals in facilities like Sand Ridge Secure Treatment Center work in “volatile environments whose day-to-day operations cannot be managed from on high.” Thielman v. LEEAN, 282 F.3d 478, 483 (7th Cir. 2002) (internal citation and quotations omitted). Because of this, the decisions of such officials are presumptively valid. To overcome this presumption, the plaintiff must show that a decision is such a departure from accepted professional judgment, practice or standards that it demonstrates that the person responsible did not base the decision on such judgment.

Plaintiff has not alleged that defendants Steve Watters or David Thornton were involved in any way in the challenged decision to issue him a Behavioral Disposition Record for his conduct. He has not produced any evidence to show that either defendant Schneider or defendant Thomas failed to exercise their professional judgment in imposing consequences for his violation of the sexual conduct rules. Defendant Thomas qualifies as a “professional” under Youngberg by virtue of his experience as the unit supervisor at the center since 2005 with responsibility for establishing and maintaining a therapeutic setting on the housing wings and overseeing the treatment, security, general living conditions and all activities within his assigned wings. Similarly, defendant Schneider qualifies as a “professional” by virtue of his experience as a security director since 2001, with responsibility for planning, implementing and coordinating security services for the Center.

Youngberg, 457 U.S. at 323 n.30 (“By ‘professional’ decisionmaker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue.”) The undisputed facts show that these defendants exercised their professional judgment. They believed that plaintiff’s conduct was disruptive to the treatment environment in the center and that management of his behavior was appropriate and necessary to insure the safety and security of the institution. Because the undisputed facts show that defendants exercised their professional judgment in holding plaintiff accountable for his actions, defendants are entitled to summary judgment.

ORDER

IT IS ORDERED that motion for summary judgment of defendants Steve Watters, Steve Schneider, David Thornton and Tim Thomas is GRANTED. The clerk of court is directed to enter judgment in defendants’ favor and close this case.

Entered this 2nd day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge