IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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GLENN T. TURNER,

Plaintiff, OPINION and ORDER

v. 11-cv-708-bbc

WILLIAM POLLARD, PETER ERICKSEN,
WILLIAM SWIEKATOWSKI,TOM CAMPBELL,
RICK RAEMISCH and MICHAEL DELVAUX,

Defendants.

- -

Pro se plaintiff Glenn T. Turner is proceeding on claims that various prison officials violated his First Amendment rights by disciplining him for possessing certain written materials and photographs and for engaging in group activity with other prisoners. In addition, he alleges that defendant William Swiekatowski attempted to incite other prisoners to attack him, in violation of the Eighth Amendment. Both sides have filed motions for summary judgment, which are ready for review. Dkt. ##66 and 75.

With respect to plaintiff's First Amendment claims, I am granting defendants' motion for summary judgment and denying plaintiff's because the disciplinary decision is reasonably related to legitimate penological interests. In particular, it was reasonable for defendants to conclude that plaintiff's copies of "The Willie Lynch Letter," "The William Lynch Update"

and a personal essay plaintiff wrote threatened safety and security at the prison. In addition, it was reasonable for defendants to find that plaintiff was involved in gang activity. This makes it unnecessary to consider an alternative argument by defendants Rick Raemisch, Peter Ericksen, Michael Delvaux and William Pollard that they were not personally involved in the alleged First Amendment violations. With respect to plaintiff's Eighth Amendment claim, I am granting defendants' motion for summary judgment and denying plaintiff's because plaintiff has not adduced any evidence that he was harmed by Swiekatowski's alleged conduct.

The undisputed facts are set forth below and are taken from the parties' proposed findings of fact and the record. I note that many of plaintiff's proposed findings of fact cited various responses defendants provided to plaintiff's discovery requests, but plaintiff did not include those responses with his summary judgment filings. Although plaintiff previously had filed his discovery *requests* with the court, he did not file defendants' responses to those requests. However, even if I assumed that the discovery responses supported the proposed findings of fact in which the responses were cited, it would not change the outcome of the parties' summary judgment motions.

UNDISPUTED FACTS

At all times relevant to this case, plaintiff Glenn T. Turner was incarcerated at the Green Bay Correctional Institution. Each of the defendants is an officer at that prison, with the exception of defendant Rick Raemisch, who was Secretary of the Wisconsin Department

of Corrections.

At unspecified times, defendant William Swiekatowski, a lieutenant at the prison, spoke to three prisoners who alleged that plaintiff was a member and leader of the Gangster Disciples, using the gang name "Diamond." One of the informants alleged that plaintiff had ordered gang members to attack other prisoners. Swiekatowski interviewed other prisoners about the latter allegation. In particular, he spoke to several prisoners about an instance in which a particular prisoner had been attacked and asked them whether plaintiff had called a "hit" on that prisoner. Swiekatowski informed one prisoner that he "heard there were inmates that had issues with him and could be planning to harm him." Swiekatowski Dec. ¶ 18, dkt. #69. However, Swiekatwoski did not say that plaintiff was planning to harm the prisoner.

Defendant Swiekatowski searched plaintiff's cell and confiscated a number of items, including an essay plaintiff wrote called "Failure to Comply with Allah's Rule and Regulations" and publications called "The Infamous Willie Lynch Letter" and the "William Lynch Update." The "Willie Lynch Letter" purports to be "a speech delivered by a white slave owner" in 1712 about how to control slaves. The "update" purports to be written by a descendent of the author of the letter in an attempt to explain how "to reap profits from the blacks without the effort of physical slavery." The essay includes a reference to "the true and living God's and Earth's of the 5% Nation of Islam."

On March 30, 2009 Swiekatowski searched the cell of the prisoner next to plaintiff's cell and discovered four photographs of other prisoners and a letter dated March 3, 2009

addressed to "Diamond" from "G.F." The letter stated that the author was sending four pictures and asked "Diamond" to "[h]old things down in the right way." The author concluded the letter with "waiting to hear from you, in the vision, your brother our struggle." "The Brothers of the Struggle" is a recognized security threat group.

On March 31, 2009 defendant Swiekatowski issued a conduct report to plaintiff, charging him with three violations of the disciplinary regulations: Wis. Admin. Code §§ DOC 303.20(3) (group resistance and petitions), 303.12(B) (battery aiding and abetting) and 303.47(2)(a) (possession of contraband). Defendant Swiekatowski stated that he was charging plaintiff under § DOC 303.20(3) because plaintiff "was in possession of Nation of Islam materials" and he had "assumed a leadership position in the Gangster Disciples." With respect to § DOC 303.12B, Swiekatowski stated that plaintiff had ordered "hits" on other prisoners. With respect to § DOC 303.47, Swiekatowski stated that plaintiff possessed a copy of the "Willie Lynch Letter."

Defendant Michael Delvaux, a supervising officer, reviewed the conduct report to determine whether it should be dismissed, proceed to a hearing or returned for further investigation. Delvaux concluded that the evidence was sufficient to proceed to a hearing.

After a hearing on April 20, 2009, defendant Thomas Campbell, another lieutenant at the prison, found plaintiff guilty of §§ DOC 303.20(3) and 303.47 but not guilty of § DOC 303.12B. With respect to § DOC 303.20, Campbell found that plaintiff had "participated in gang activity by holding a meeting at recreation and handing out duties to other members in the gang." In addition, Campbell found that plaintiff was in possession

of "nation of islam 5% literature," which is not allowed because "it is identified as a security threat group."

In support of the conclusion that plaintiff was involved in gang activity, defendant Campbell cited the statements of three confidential informants. The summaries of the statements that plaintiff received at the hearing included the following information:

- according to informant #3 the Gangster Disciples were trying to organize at the prison and plaintiff "is the one calling it"; plaintiff was requiring other prisoners to pay "dues" to the gang;
- according to informant #2, plaintiff was "trying to pull all the groups together"; he called meetings in the gym on Saturdays, setting an amount for dues, giving "out positions to people"; plaintiff stated that "everyone is supposed to be on count"; the informant heard that plaintiff had received a letter from "governing members" of the Gangster Disciples; "[t]hey sent him pictures and permission to operate officially in the Wisconsin Prisons";
- according to informant #1, plaintiff was requiring members to pay dues; he had "coordinators" on each tier; and plaintiff had given orders to one of them to attack other prisoners.

Dkt. #69-1 at 9. All of the informants identified plaintiff's gang name as "Diamond." (Defendants filed the original statements in camera. Dkt. #59-1. I have reviewed the original statements and find that the summaries are accurate.) In finding the informants to be credible, Campbell noted that their statements corroborated each other and were further

corroborated by a video showing that plaintiff was leading a meeting at the gym. With respect to the "nation of islam 5% literature," plaintiff admitted that it belonged to him.

In support of his finding that plaintiff was in possession of contraband, defendant Campbell stated that the "Willie Lynch Letter" and "Willie Lynch Update" are "inflammatory and inciteful" and that plaintiff admitted he possessed both publications.

Defendant William Pollard affirmed defendant Campbell's decision.

OPINION

A. First Amendment

Plaintiff contends that defendants violated his right to free speech under the First Amendment by disciplining him for possessing the "Willie Lynch Letter," the "William Lynch Update," a personal essay and photographs of other prisoners and for meeting with other prisoners in the recreation room. Defendants do not deny that prisoners have a right under the First Amendment to read publications, express their own thoughts in writing, engage in group activities with other prisoners and possess photographs of others. E.g., King v. Federal Bureau of Prisons, 415 F.3d 634, 638 (7th Cir. 2005) (publications); Abu-Jamal v. Price, 154 F.3d 128, 133 (3d Cir. 1998) (prisoner's own writings); Jackson v. Frank, 509 F.3d 389, 391-92 (7th Cir. 2007) (assuming that photographs may be protected). Although the Supreme Court has stated that "freedom of association is among the rights least compatible with incarceration," Overton v. Bazzetta, 539 U.S. 126, 131 (2003), it has never held that group activities of prisoners fall completely outside the scope of the First

Amendment.

Claims brought by prisoners under the First Amendment are governed by the standard set forth in Turner v. Safley, 482 U.S. 78 (1987), which is whether the restriction is reasonably related to a legitimate penological interest. In determining whether a reasonable relationship exists, the Supreme Court usually considers four factors: whether a "valid, rational connection" exists between the restriction and a legitimate governmental interest; whether alternatives for exercising the right remain to the prisoner; what impact accommodation of the right will have on prison administration; and whether there are other ways that prison officials can achieve the same goals without encroaching on the right. Id. at 89.

Defendants have the initial burden to show a logical connection between the restriction on the prisoner's speech and their legitimate interest. Beard v. Banks, 548 U.S. 521 (2006) ("Turner requires prison authorities to show more than a formalistic logical connection between a regulation and a penological objective."); King v. Federal Bureau of Prisons, 415 F.3d 634, 639 (7th Cir. 2005) ("[T]he government must present some evidence to show that the restriction is justified"). If defendants make this showing, the burden shifts to plaintiff on the remaining three factors. Singer v. Raemisch, 593 F.3d 529, 536–37 (7th Cir. 2010) ("[T]he burden shift[s] to" prisoner "once the prison officials provid[e] the court with a plausible explanation.").

1. Willie Lynch Letter and William Lynch Update

As discussed above, the "Willie Lynch Letter" purports to be a 1712 speech about how slave owners can control their slaves; the "William Lynch Update" is about controlling African Americans in the present. Defendants argue that these two publications are not protected speech because they are "extremely racially inflammatory and present a danger to institutional security and order." Swiekatowski Aff. ¶ 11, dkt. #69.

Outside the prison context, there is no question that the documents at issue are protected by the First Amendment. Citizens are free to express a variety of opinions, even if most citizens would find the opinions offensive, provocative or racist. Snyder v. Phelps, 131 S. Ct. 1207, 1219 (2011) (protesting at military funerals protected); Brandenburg v. Ohio, 395 U.S. 444, 445 (1969) (Ku Klux Klan rallies protected). "[I]n public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment." Boos v. Barry, 485 U.S. 312, 322 (1988) (some internal quotation marks omitted). Further, unless speech incites violence directly, the government cannot censor it simply because others might react to it in a negative or hostile manner. Zamecnik v. Indian Prairie School District No. 204, 636 F.3d 874, 879 (7th Cir. 2011).

However, in the prison setting, courts must give substantial deference to administrators in deciding how to run the prison, particularly on issues that implicate safety and security. Woods v. Commissioner of the Indiana Dept. of Corrections, 652 F.3d 745, 748 (7th Cir. 2011). For example, in Toston v. Thurmer, 689 F.3d 828, 830-31 (7th Cir.

2012), the court rejected a First Amendment challenge brought by a prisoner who had been disciplined for possessing a copy of the "Ten-Point Program" of the Black Panthers. The court focused on Point Eight, which is a call for "freedom for all Black men held in federal, state, county and city prisons and jails," and concluded that it "could be thought by prison officials an incitement to violence by black prisoners" because of the Black Panthers' violent history. Id.

In Van den Bosch v. Raemisch, 658 F.3d 778, 787 (7th Cir. 2011), the court of appeals rejected another First Amendment challenge of a prisoner disciplined for possessing a newsletter about Wisconsin prisons because the newsletter called the Wisconsin Parole Commission and Program Review Committee "clueless" and "totalitarian" and claimed that the commission used "manipulative tactics" and "fabricated stories." The court deferred to prison officials' judgment that the newsletter had the potential to "encourage disrespect on the part of inmates" and "encourage distrust of staff and unrest among inmates." In Singer, 593 F.3d 529, the court upheld a rule banning role-playing games in a prison because of the concerns that they could foster gang activity and inhibit rehabilitation of prisoners by keeping them in a fantasy world, even though the prison officials did not cite any evidence of problems that had occurred in the past. See also Watkins v. Kasper, 599 F.3d 791, 797 (7th Cir. 2010) (upholding discipline of prisoner who confronted prison official in front of other prisoners because manner of speech was disruptive).

The two publications at issue in this case include language that is no less provocative than the speech banned in Toston and Van den Bosch. The "letter" begins with instructions

to slave owners to pit slaves against each other to foster dependency and submission:

> [Y]ou must pitch the old black male vs. the young black male, and the young black male against the old black male. You must use the dark skin slaves vs. the light skin slaves, and the light skin slaves vs. the dark skin slaves. You must use the female vs. the male, and the male vs. the female. You must also have your white servants and overseers distrust all Blacks, but it is necessary that your slaves trust and depend on us.

Dkt. #58-1. The author writes, "let's make a slave" and compares the process to "breaking a horse," referring to African Americans as "niggers" throughout the letter. He writes that one "step is to take a bullwhip and beat the remaining nigger males to the point of death, in front of the female and the infant. Don't kill him, but put the fear of God in him, for he can be useful for future breeding." Another passage states, "If she shows any sign of resistance in submitting completely to your will, do not hesitate to use the bull whip on her to extract that last bit of bitch out of her." There are many more examples of similar language throughout the letter.

In the "update" the author purports to give instructions on "how to make an economic or 'ghetto slave.'" Dkt. #58-1 at 9. The author accuses African Americans of "ignorance," "greed" and "selfishness," arguing that "the best way to hide something from a black is to put it in a book," that "[t]hey would rather buy some sneakers than invest in starting a business or community" and that "[t]heir selfishness does not allow them to be able to work together on any project or endeavor of substance." Id.

It is not difficult to imagine how the language in the publications could increase racial tensions in the prison or even lead to violence. The prison's Security Threat Group Agency Coordinator, Patrick Brant, explained that the publications have the potential to create two

different problems: "White Supremacist leaning inmates hold the letter up as a model as to how 'right minded whites' should control what they term to be 'mud people.' African American inmates use it as a rallying cry to resist the efforts of prison administrators." Brant Aff., ¶ 17, dkt. #63. These concerns are similar to those raised in Toston, Van den Bosch and Singer and they are no less plausible in this case.

Plaintiff argues that defendants do not identify any specific language in the publications that "calls for Black men to rise up against white people or specifically to incite Black prisoners to rise up against prison officials." Plt.'s Br., dkt. #76, at 21. This is true, but it is not required. "The question of whether censorship is an appropriate measure to protect security and encourage rehabilitation requires a context-specific determination that cannot be resolved by simply evaluating the level of explicit violence within a given publication." Van den Bosch, 658 F.3d at 788. In this case, prison officials have determined that the publications are a threat to security not because the publications advocate violence, but because of their history:

> In the prison setting, The Infamous "William Lynch Letter" has been used by militant leaning African American inmates, a lot of which are identified as members of various STGs . . . as a tool to incite others to action against the administration or the United States. . . . It has been my experience that inmates were using the message in The Infamous "William Lynch Letter" to demonstrate that the "white man's" thinking hadn't changed since 1712. They used this to promote the idea that Wisconsin prisons were no more tha[n] latter day plantations where the "white man was slave master." They used the content of the letter as a means of demonstrating how prison officials were attempting to control them by a divide and conquer mentality and urged African American inmates to resist the attempts of the "white man" (prison authorities) to keep them under control.

Brant Aff. ¶¶ 14-15, dkt. #63. Plaintiff does not deny that defendants have a legitimate

interest in curbing the mentality described by Brant and he does not cite any evidence undermining the reasonableness of Brant's concerns.

In any event, plaintiff's argument addresses only one of the concerns that Brant raises. Plaintiff says nothing about the danger that the publications could be used to promote white supremacy or more generally that the inflammatory language in the publications could incite violence. There are few words in the United States considered more offensive and degrading than "nigger." The repeated use of that word throughout the letter is strong support by itself that defendants did not exceed their authority in deciding to censor the letter. Although it is unlikely that plaintiff's intent is to degrade African Americans, it is enough that other prisoners who viewed the letter could interpret the letter that way.

Plaintiff says that he "does not ask for the right to share his publications or writings with other prisoners, he simply requests that he have the right to possess them in his cell." Plt.'s Br., dkt. #96, at 25. However, even if I assumed that defendants' security concerns would be adequately addressed so long as plaintiff did not let anyone else read the publications, plaintiff identifies no effective way that defendants could allow plaintiff to keep the publications and prevent others from seeing it, either because plaintiff chose to show it to others or because a cell mate discovered it.

Plaintiff raises a number of other arguments in support of his position, but none of them can carry the day. First, plaintiff says that the publications are not "presently listed on any banned or prohibited publications list." Plt.'s Br., dkt. #76, at 19. Even if that is

true, it has little relevance to plaintiff's claim. Officials cannot be expected to review every existing publication and make an advance determination as to each one whether it should be permitted. Prison officials may wish to create a list to give notice to prisoners of the types of materials that are not allowed, but they are not required to do so by the First Amendment. Regardless whether a publication is on or off a list, the ultimate question is the same, which is whether the decision to ban the publication is reasonably related to a legitimate interest.

Second, plaintiff says that defendant Swiekatowski testified at the disciplinary hearing that the Willie Lynch Letter was banned at the prison because it is part of a white supremacist book called The Turner Diaries, but that Brant has admitted that the two publications are not related. Plaintiff argues that the relevant question under Turner is "what actually motivated the restriction, not what could have motivated it." Plt.'s Br., dkt. #76, at 25. Presumably, plaintiff means to argue that Swiekatowski's testimony represents the "real" reason that defendants censored the publications and that Brant's testimony expressing concerns about the dangers of the letter is simply an after-the-fact justification.

Defendant Campbell did not say anything about the The Turner Diaries in his disciplinary decision, but even if I assume that plaintiff is correct that defendants' justification for censoring the letter has changed, it would not make any difference. In Hammer v. Ashcroft, 570 F.3d 798, 803 (7th Cir. 2009), the court stated that a prison official's actual reasons for taking a particular action are irrelevant under Turner. Rather, Tuner requires "an objective inquiry": "whether a rule is rationally related to a legitimate goal." Id. Thus, under Hammer, it does not matter whether defendants' justification during

litigation matches the justification they gave during the disciplinary proceedings.

Third, plaintiff says that the prison library contained copies of the Willie Lynch Letter at the time plaintiff was disciplined and that defendants "allow" other books that include the letter. Plt.'s Br., dkt. #76, at 22. Presumably, plaintiff means to argue that the presence of the letter in the prison library undermines defendants' argument that the letter is a security threat. However, in most cases, the court of appeals has not found similar arguments to be persuasive. Munson v. Gaetz, 673 F.3d 630, 636-37 (7th Cir. 2012) (rejecting argument that restriction on book was invalid simply because "many other inmates have these kinds of medical books in their possession"); Mays v. Springborn, 575 F.3d 643, 649 (7th Cir. 2009) ("Mays's only argument that the prison's censorship was unreasonable is that he had access to other writings and to television shows about prison riots, but the deference we afford prisons permits such seeming inconsistences."); Azeez v. Fairman, 795 F.2d 1296, 1299 (7th Cir. 1986) ("The failure to enforce a rule consistently does not make the rule unconstitutional."). But see George v. Smith, 507 F.3d 605 (7th Cir. 2007) ("A prison could not invoke security as a reason to exclude publications that prisoners may read in the library, and which they may copy out for use in their cells.").

In any event, the evidence plaintiff cites does not support an allegation that defendants are permitting other prisoners to possess the Willie Lynch Letter. Plaintiff cites the affidavit of Antoine Nelson, dkt. #85, who says that he has been incarcerated at the Green Bay prison since 2008. Nelson does not say that the prison library included copies of the letter; rather, he says that the library includes "books with mention of the whole

Willie Lynch doctrine in them," including People's History of the United States by Howard Zinn. Of course, "mention[ing]" the letter in the context of a book is very different from allowing a prisoner to possess the entire letter so that he could use it to incite other prisoners.

In addition, plaintiff cites the affidavit of Alphoncy Dangerfield, dkt. #86, who says he is a prisoner at the Wisconsin Secure Program Facility. Dangerfield discusses a book that he says includes passages from the letter, but he does not say that the book is permitted at any Wisconsin prison or the Green Bay prison in particular or, if it is, that any of the defendants is aware that the book includes an excerpt from the Willie Lynch Letter.

The other Turner factors favor defendants as well. With respect to plaintiff's alternatives to exercising his First Amendment rights, plaintiff has not shown that the decision to censor the two publications prevents him from reading a wide variety of materials on a wide variety of subjects. In his brief, he says that a ruling in defendants' favor will permit them to prohibit any publication that "speak[s] truthfully about U.S. history of slavery" and "all sorts of historical literature, newspapers, etc. that prison officials do not personally prescribe to." Plt.'s Br., dkt. #76, at 25. However, plaintiff cites no evidence that defendants censored the two publications simply because they were "truthful" rather than because of the way in which the publications have been used in the past and the particular language in the publications. (In fact, historians have concluded that the letter is a hoax. http://en.wikipedia.org/wiki/William_Lynch_speech.) Further, plaintiff has not cited any evidence suggesting that defendants are prohibiting him or any other prisoner from reading

about current events or history, including the history of slavery.

The third and fourth factors overlap with the first factor in this case. Because I have concluded that I must defer to defendants' judgment that the publications pose a security threat, there is no way to accommodate plaintiff's First Amendment rights without undermining defendants' legitimate interests. Accordingly, I am granting defendants' motion for summary judgment as to this claim.

2. Personal essay

At the end of his essay, plaintiff wrote that he "would like to extend our universal greeting of peace to the true and living God's and Earth's of the 5% Nation of Islam. Remember: Only 5% of the 5% is truly 5%!" Dkt. #59-1 at 6. In defendant Campbell's disciplinary decision, he concluded that plaintiff's personal essay was gang-related because it included a reference to "nation of islam 5%," which Campbell stated was a security threat group. However, in his affidavit, he says he consulted Patrick Brant, the Security Threat Group Agency Coordinator, and learned that the correct name of the security threat group is "5% Nation of Gods and Earths." Campbell Aff. ¶ 8. dkt. #72. Brant testified that the Nation of Gods and Earths is a splinter group of the Nation of Islam and a "Black Supremacist organization that has a history of violence especially in the prison setting." Brant Aff. ¶ 11, dkt. #63. See also Carter v. Johnson, 2013 WL 953998, *1 n.3 (W.D. Va. Mar. 12, 2013) ("'Five Percenter' is the common label for an adherent of the alleged prison religion 'The Nation of Gods and Earths.' Several state prison systems have increased

supervision of Five Percenters because they 'act as an organized group within the prison system to receive new members, intimidate members of rival groups, and participate in criminal activity, including extortion, robbery, assaults and drug trafficking.'") (quoting Lord Natural Self–Allah v. Annucci, 1999 WL 299310, *9 (W.D.N.Y. Mar. 25, 1999)).

Plaintiff does not deny that the Nation of Gods and Earths presents a security threat in the prison or that censoring literature related to the group is reasonably related to furthering an interest in safety and security. Instead, he argues that defendants were wrong to conclude that he was affiliated with that group. He points out that he did not use the phrase "Nation of Gods and Earths" in his letter, but rather made a reference to the "God's and Earth's of the 5% Nation of Islam." This argument is frivolous. Regardless what plaintiff meant to say, the close similarity between his language and the name of the prohibited group made it reasonable for defendants to find that he was referring to the prohibited group.

Alternatively, plaintiff argues again that defendants should not be allowed to change their reason for censoring his essay. It is not necessarily accurate to say that defendants changed their justification; they simply used the wrong name initially. In any event, as discussed above, under Hammer, prison officials are not prohibited from modifying their explanations in the context of litigation. Accordingly, defendants are entitled to summary judgment on this claim as well.

3. Group activity

In his decision defendant Campbell found that plaintiff had "participated in gang activity by holding a meeting at recreation and handing out duties to other members in the gang." Plaintiff does not deny that defendants have a legitimate interest in suppressing gang activity, Singer, 593 F.3d at 535, and he does not deny that he was involved in a group meeting at recreation. Instead, he devotes many pages of his brief and proposed findings to arguing that defendants were wrong to conclude that the meeting he had at recreation was gang-related.

As I reminded plaintiff in a previous order,

> the question in this case is not whether defendants were correct in determining that he is a gang member or that the confiscated items were gang-related. Rather, the question is whether defendants violated his rights under the First Amendment and the standard of review is whether defendants' actions were reasonably related to a legitimate penological interest. Turner v. Safley, 482 U.S. 78 (1987). Under that standard, the court must give deference to prison officials' judgment that a particular act is gang-related or otherwise undermines prison security. E.g., Koutnik v. Brown, 456 F.3d 777 (7th Cir. 2006) (deferring to prison staff's assessment regarding gang symbols). Thus, plaintiff will not be able to prevail on his claim simply by showing that there were weaknesses in defendants' case against him.

Order dated Oct. 9, 2012, dkt. #55 at 4.

The evidence defendants cite is more than adequate to support a finding under the Turner standard that plaintiff was involved in gang activity. Defendant Campbell relied on statements from three different informants, which corroborated each other's statements, as well as the letter and photographs defendants discovered. Plaintiff attempts to poke holes in the evidence in various ways, but the kind of scrutiny plaintiff is asking the court to apply

goes well beyond the deferential review required by Turner. Defendants are entitled to summary judgment on this claim as well.

4. Photographs

In the screening order, I allowed plaintiff to proceed on a claim that defendants disciplined him for possessing photographs, in violation of the First Amendment, but the parties' summary judgment materials raise questions about whether there is a justiciable controversy with respect to this claim. Although defendant Campbell's disciplinary decision suggests that he used the photographs as *evidence* of plaintiff's gang activity, Campbell did not say in his decision that he was punishing plaintiff for possessing the photographs, perhaps because there was no evidence that plaintiff ever possessed them. Plaintiff cites no other evidence suggesting that he was disciplined for having the photos. Although I assume that defendants confiscated the photos, plaintiff did not request an injunction requiring defendants to give the photos to him, so I see no harm that can be remedied by this lawsuit if plaintiff were to prevail on this claim. A federal court cannot decide the merits of a claim unless the plaintiff has shown that success on the claim will redress an injury caused by the defendants' conduct. Milwaukee Police Association v. Board of Fire & Police Commissioners of City of Milwaukee, 708 F.3d 921, 926 (7th Cir. 2013).

Even if there were a genuine controversy about the photos, this claim would fail for the same reasons that plaintiff's claim regarding gang activity failed. Under Turner, the evidence was sufficient to allow defendants to find that the photographs were gang-related.

B. Eighth Amendment

I allowed plaintiff to proceed on a claim that defendant Swiekatowski attempted to incite other prisoners to attack plaintiff, in violation of the Eighth Amendment. Swiekatowski admits that he asked some prisoners whether plaintiff had put "hits" out on anyone, but he denies that he did so to encourage those prisoners to retaliate against plaintiff. Rather, he says he interviewed the other prisoners as part of the investigation into the conduct report, which included allegations that plaintiff had ordered attacks on other prisoners. Plaintiff disputes Swiekatowski's account with declarations of prisoners who say they were interviewed by Swiekatowski. For example, Benny Choice avers that Swiekatowski asked him to "initiate a fight with an inmate I did not know name[d] Glenn Turner A.K.A. Diamond" in exchange for a placement in better conditions of confinement. Dkt. #89.

The problem with plaintiff's claim is that he has adduced no evidence that he suffered any harm as a result of defendant Swiekatowski's actions. Although the absence of physical harm does not necessarily bar a plaintiff's claim, Thomas v. Illinois, 697 F.3d 612, 614-16 (7th Cir. 2012); Calhoun v. DeTella, 319 F.3d 936, 941-42 (7th Cir. 2003), plaintiff must demonstrate that he suffered *some* harm, even if it is only psychological. This is a requirement of every claim brought under the Eighth Amendment and § 1983. Roe v. Elyea, 631 F.3d 843, 863-64 (7th Cir. 2011) (stating in Eighth Amendment case that a "successful § 1983 plaintiff . . . must establish not only that a state actor violated his constitutional rights, but also that the violation caused the plaintiff injury or damages."). In this case,

plaintiff does not allege that any prisoner attacked him because of Swiekatowski's alleged statements or that he lived in fear believing that an assault was imminent.

The only harm of any kind that plaintiff alleges is that his cousin, also a prisoner, was "attacked" by a Muslim prisoner because of Swiekatowski's "action of spreading rumors that Plaintiff put hits out on Muslims." Plt.'s PFOF ¶ 71, dkt. #77. However, the statement in the prisoner's declaration is that he "got into a fight" with a Muslim prisoner, not that he was attacked, and he does not explain why he believes that the fight was related to anything Swiekatowski said or did. Dkt. #93. In any event, plaintiff does not have standing to sue for injuries to a third party. Hinck v. United States, 550 U.S. 501, 510 n.3 (2007). This claim must be dismissed as well.

ORDER

IT IS ORDERED that plaintiff Glenn T. Turner's motion for summary judgment, dkt. #75, is DENIED, and the motion for summary judgment filed by defendants Tom Campbell, Michael Delvaux, Peter Ericksen, William Pollard, Rick Raemisch and William Swiekatowski, dkt. #66, is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 14th day of May, 2013.

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