

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|---------------------------------------|----------|---------------------|
| THERESA VICTORY, <i>et al.</i> | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 18-5170 |
| | : | |
| BERKS COUNTY, <i>et al.</i> | : | |

ORDER

AND NOW, this 25th day of January 2019, upon considering Defendants' Motion for relief under Fed. R. Civ. P. 60 (ECF Doc. No. 41) seeking to modify our January 15, 2019 Order (ECF Doc. No. 39) requiring compliance by January 18, 2019 to ensure equal protection for all Trusty inmates and to reconsider specific Findings of Fact and Conclusions of Law (ECF Doc. No. 38) supporting our January 15, 2019 Order, Plaintiffs' Opposition (ECF Doc. No. 56), following a scheduled January 23, 2019 evidentiary hearing after we stayed paragraph one of our January 15, 2019 Order requiring compliance by January 18, 2019 (ECF Doc. No. 48), after evaluating the credibility of Berks County's witnesses at our January 23, 2019 evidentiary hearing, and upon finding:

a. Berks County, through Warden Quigley and her subordinate officers, knowing of Ms. Victory's pending lawsuit seeking constitutional protections from retaliation and injunctive and declaratory relief under the Equal Protection clause leading to an extensive January 10, 2019 preliminary injunction hearing where Ms. Victory offered credible testimony, entered a sanction of placing Plaintiff in administrative disciplinary segregation status within four days of her January 10, 2019 hearing testimony and before our January 15, 2019 Order which required Berks County to treat Ms. Victory to the same conditions of confinement provided to male inmates with her same Trusty classification;

b. On January 15, 2019, hours before we issued our injunction, Ms. Victory admitted guilt to two Class II prison offenses (passing property offense and misrepresentation) and opposed a charged harassment offense occurring after our January 10, 2019 hearing arising from her placing an innocuous non-threatening January 13, 2019 newspaper article with her highlights of certain items under the cell door of another inmate (and former cellmate) but then denying her same conduct three times to the investigating lieutenant who already knew the facts from video surveillance when he questioned her;

c. Ms. Victory contested the harassment offense, swearing she “was not trying to harass [the other inmate] in any way” but the hearing officer disagreed finding the other inmate “perceived [Ms. Victory’s] actions to be harassing and notified staff immediately”;

d. Based on her guilty plea to the misrepresentation charge, Berks County placed Ms. Victory in disciplinary segregation custody classification for ten days for misrepresentation, three days for property offense and two days for harassment resulting in temporarily removing her Trusty custody classification while she is placed in segregation;

e. Ms. Victory’s counsel elected not to challenge the terms of sentence for Class II offenses as retaliatory but instead asked us to find the entire disciplinary finding of guilt after her January 10, 2019 testimony is retaliatory and essentially overrule Berks County’s finding of guilt on the three offenses, two of which Ms. Victory plead guilty;

f. Based on Ms. Victory admitting guilt to two Class II offenses including lying three times to the investigating lieutenant, Berks County established it “would have made the same [guilty of the offenses] decision absent the protected conduct for reasons reasonably related to a legitimate penological interest”¹;

g. Placing Plaintiff in this disciplinary segregation based on her guilty plea – albeit within days of her testimony and possibly having the effect of chilling her, and other inmates’, constitutional rights – temporarily distinguishes her from the male Trusty inmates under our January 15, 2019 Order causing Berks County to now request we modify the required compliance;

h. Berks County’s discipline for the three offenses, including based upon the guilty pleas to the two offenses, is within the guidelines for an admitted Class II violation under its established Inmate Handbook;

i. Given Plaintiff’s present incarcerated status, we could not hear her testimony but reviewed her affidavit (ECF Doc. No. 56-1) concerning an ongoing pattern of retaliatory harassment towards her based on several complaints, the filing of this lawsuit and her January 10, 2019 testimony and her retaliation concerns are more directly related to a retaliation claim which she has not, as yet, met her burden of showing a causal link between her guilty plea leading to Berks County’s January 2014 finding of guilt on the three offenses and her exercise of constitutional rights;

j. Berks County’s witnesses did not credibly explain why Berks County selected this sanction of disciplinary segregation as opposed to a lesser sanction which may not have deprived Ms. Victory of Trusty status which provides her basis for a remedy as of January 18, 2019;

k. On January 17, 2019 – two days after our January 15, 2019 Order prohibiting retaliation against Ms. Victory - Berks County denied Ms. Victory’s appeal of the harassment offense by substituting the hearing officer’s view of the harassing nature of Ms. Victory’s highlights on the January 13, 2019 newspaper article she placed under the other inmate’s cell

door and despite the reporting Officer Butterworth swearing as to her confusion as to why Ms. Victory highlighted certain portions of the article and the content of the article not otherwise raising security concerns;

l. Had Ms. Victory succeeded on her appeal of the harassment charge, her disciplinary segregation would end two days earlier;

m. Ms. Victory's counsel did not presently argue the January 17, 2019 denial of her appeal of the harassment charge based on the appeal officer's personal view the highlighted article was harassing to the other inmate is retaliatory;

n. Ms. Victory exhausted her internal grievance procedure and remains in segregation and, as of today, not in a Trusty custody classification;

o. Ms. Victory's present disciplinary status will end on January 29, 2019 which is one day after her scheduled release from Berks County Jail or Community Reentry Center;

IT is ORDERED Defendants' Motion for relief (ECF Doc. No. 41) is **GRANTED in part** and **DENIED in part**:

1. Defendants' Motion for relief (ECF Doc. No. 41) is **GRANTED** to correct our inaccurate finding of the publication date of the newspaper article concerning Plaintiff's lawsuit in the *Reading Eagle* to accurately report the publication date of the newspaper article is December 11, 2018;

2. We continue to stay Berks County's obligations to provide Ms. Victory with equal treatment of male Trusty inmates until the January 29, 2019 lifting of her disciplinary

segregation based on her guilty pleas to prison discipline charges which allowed Berks County to sanction her to disciplinary segregation until January 29, 2019;

3. On or before **6:00 PM EST on January 28, 2019**, Berks County, through Warden Quigley, shall comply with the obligations of our January 15, 2019 Order by filing a plan with this Court describing the constitutional protections defined in our January 15, 2019 Order it will provide Ms. Victory after her disciplinary segregation expires on January 29, 2019²; and,

4. Defendants' Motion for relief (ECF Doc. No. 41) is otherwise **DENIED**, including Berks County's motion to modify our January 15, 2019 Order which we expect Berks County and its Warden will strictly obey following the end of Ms. Victory's disciplinary segregation on January 29, 2019.³



KEARNEY, J.

¹ *Watson v. Rozum*, 834 F.3d 417, 422 (3d Cir. 2016) (quoting *Rausser v. Horn*, 241 F.3d 330, 333-34 (3d Cir. 2001)). Ms. Victory's lawyer confirmed he is presently only challenging the process and violation and not the term and nature of the penalty. On the present record, Ms. Victory's plea avoids the ambiguity in the nature of the violation which caused our Court of Appeals to reverse the district court's entry of summary judgment against the inmate in *Watson*. Conversely, on the present preliminary record, we do not have evidence confirming the punishment is reasonably related to a legitimate penological interest. On this preliminary record, while we may interfere with the placement of inmates when constitutional rights are infringed, we do not find Berks County's decision to find her guilty of the violations after she plead guilty (although the investigating lieutenant already knew the facts and questioned her only to see if she would lie), warrants ordering the release of Ms. Victory from disciplinary segregation. But nothing in this Order affects our ability to review whether Berks County's selected punishment altering Ms. Victory's Trusty inmate classification and thus temporarily depriving her of rights as of January 18, 2019 under our January 15, 2019 Order, may be shown to be retaliatory warranting a jury's review of potential damages. See *Mitchell v. Horn*, 318 F.3d 523, 530 (3d Cir. 2003) ("In dismissing [the inmate's] retaliation claim, the District Court failed to recognize that '[g]overnment actions, which standing alone do not violate the Constitution, may nonetheless be constitutional torts if motivated in substantial part by a desire to punish an individual for exercise of a constitutional right.'" (quoting *Allah v. Seiverling*, 229 F.3d 220, 224-25 (3d Cir. 2000) (omitting additional citations))).

² We can address future steps to ensure Ms. Victory's equal protection rights are upheld on and after January 29, 2019. *See Hampton v. Baldwin*, No. 18-550, 2018 WL 58330730, at *16 (S.D. Ill. Nov. 7, 2018). Mindful of security concerns, Berks County's filed plan need not include drawings of the units in the Jail or Community Reentry Center, but must describe steps taken to comply with our January 15, 2019 Order including a modified screen on windows in the S or T units in the Community Reentry Center or a schedule at the Jail for Ms. Victory equivalent to the liberty provided to male Trusty inmates with offered programming including transport to the Community Reentry Center if necessary.

³ We do not modify our January 15, 2019 Order to eliminate Berks County's continuing obligations once Ms. Victory finishes serving her term in disciplinary segregation. Considering equity's demand for a flexible response, there is nothing unworkable in our decree once Ms. Liberty completes the disciplinary segregation early next week. *Building and Construction Trades v. NLRB*, 64 F.3d 880, 888 (3d Cir. 1995). Upon finishing her term in disciplinary segregation, Ms. Victory faces a recurring risk of equal protection violations unless Berks County now completes its plans for a schedule defining its actions compliant with our January 15, 2019 Order. We expect it began planning after our January 15, 2019 Order. We also expect Berks County will otherwise honor the January 15, 2019 Order to avoid retaliating towards Ms. Victory or other inmates affected by our January 15, 2019 Order. To ensure prompt notice, we are emailing this Order to all counsel contemporaneous with delivery to our Clerk for docketing.