S.D.N.Y.-N.Y.C.
10-cv-7795
Hellerstein, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of November, two thousand fifteen.

Present:

Amalya L. Kearse,
Reena Raggi,
Richard C. Wesley,
Circuit Judges.

Samuel Davis,

Plaintiff-Appellant,

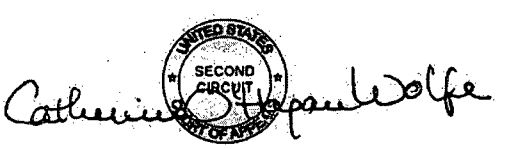
v. 15-2422

Florence, Sergeant (Nurse), et al.,

Defendants-Appellees.

Appellant, *pro se*, moves for leave to proceed *in forma pauperis*, appointment of counsel, and a refund of the filing fee he paid in connection with a previous appeal. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e)(2).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of January, two thousand sixteen.

Samuel Davis,

Plaintiff - Appellant,

v.

Florence, Sergeant (Nurse), Geneviene Switz, (P.A), Wladyslaw Sidorowicz, (Doctor), James Walsr, (Superintendent), Patrick Grippin, (Dept of Security), Norman Bezio, (Director of Special Housing), Brain Fischer, (Commissioner), Belinda McKenny, (I.R.C.), Karen Bellamy, (Director of Grievance), M. Lake, (Counselor), Paul Mace, (Sergeant), D. Long, Joseph Maxwell, (Lieutenant), Officer Armstrong, Michael Makowski, (Officer), E. Puerschner, (Officer),

Defendants - Appellees.

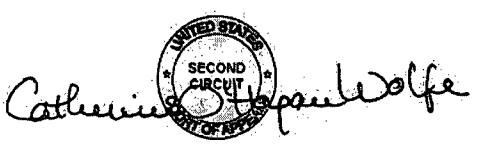
ORDER

Docket No: 15-2422

Appellant, Samuel Davis, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request as a motion for reconsideration, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the motion and petition are denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL DAVIS,

Plaintiff,

-against-

FLORENCE SERGEANT et al.,

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

10 Civ. 7795 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiff Samuel Davis, proceeding *pro se,* brought this action for alleged violations of his First, Fourth, Eighth, and Fourteenth Amendment rights while he was incarcerated at Sullivan Correctional Facility in Fallsburg, New York. On June 15, 2012, Defendants moved for summary judgment, which I granted on November 12, 2013, resulting in dismissal of the case. Plaintiff appealed that order on December 3, 2013. In a summary order dated April 9, 2015, the Second Circuit affirmed each of the order's holdings, but vacated and remanded on the ground that I had failed to consider the merits of Plaintiff's due process claim relating to his administrative segregation reviews and Plaintiff's pendant state law claims. *See Davis v. Florence et al.,* No. 13-4604-pr, 2015 WL 1566803, at *5 (2d Cir. Apr. 9, 2015). On June 25, 2015, Defendants moved for summary judgment on Plaintiff's only remaining federal claim: that the three-person review committee that recommended Plaintiff remain in administrative segregation was not impartial. For the following reasons, Defendants' renewed motion for summary judgment is granted.

BACKGROUND

During a June 29, 2009 interview with Defendant Patrick Griffin, the Deputy Superintendent for Security at Sullivan, Plaintiff stated "I will shock Sullivan Correctional Facility if I remain a double cell and I will not be targeting inmates." Griffin Decl. Ex. VV. Mr. Griffin recommended that Plaintiff be placed in administrative segregation based on this statement, *id.*, and an administrative segregation hearing was held between July 8 and July 10, 2009. The only witness called by Plaintiff was Defendant Griffin, who testified to Plaintiff's June 29 statement and indicated that it led Griffin to believe that Plaintiff posed a security threat. At the hearing, Plaintiff admitted making the statement in question, but claimed that by "shock Sullivan" he meant that he would initiate fraudulent UCC filings against corrections officers. Griffin Decl. ¶ 9. Deputy Superintendent Nelson, who conducted the hearing, placed Plaintiff in administrative segregation because he found that Plaintiff's continued presence in general population posed a threat to the safety and security of the facility. On September 8, 2009, November 17, 209, and January 6, 2010, three-person committees comprising a guidance counselor, a security supervisor, and Defendant Griffin conducted reviews of the continued need for administrative segregation. Griffin Decl. Ex. UU. Each time, the committees recommended continued administrative segregation based on Plaintiff's initial threat, his history of violent conduct while incarcerated,[1] and the disciplinary actions Plaintiff received after administrative segregation was imposed. *Id.* Ex. XX. Superintendent James Walsh made the final determinations to keep Plaintiff in administrative segregation based on the committee's recommendations. *Id.*

[1] Mr. Davis's disciplinary history allegedly includes incidents of stealing and assaults on both staff and inmates. *See* Griffin Decl. Ex. XX (Report of Superintendent James Walsh).

STANDARD OF REVIEW

Summary judgment is appropriate where the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56. A genuine issue of material fact exists where "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court must "view the evidence in the light most favorable to the party opposing summary judgment, . . . draw all reasonable inferences in favor of that party, and . . . eschew credibility assessments." *Amnesty Am. V. Town of W. Hartford*, 361 F.3d 113, 122 (2d Cir. 2004). However, the non-moving party may not rely on conclusory allegations or unsubstantiated speculation to defeat the summary judgment motion. *Scotto v. Almenas*, 143 F.3d 105, 114 (2d Cir. 1998).

DISCUSSION

Courts "have repeatedly said both that prison officials have broad administrative and discretionary authority over the institutions they manage and that lawfully incarcerated persons retain only a narrow range of protected liberty interests." *Hewitt v. Helms*, 459 U.S. 460, 467 (1983). Indeed, "[t]he Due Process Clause standing alone confers no liberty interest in freedom from state action taken 'within the sentence imposed.'" *Sandin v. Conner,* 515 U.S. 472, 480 (1995) (quoting *Hewitt,* 459 U.S. at 468). This is because "the transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence." *Hewitt*, 459 U.S. at 468. Such action by prison officials, known as administrative segregation, "requires only an informal nonadversary review of evidence . . . in order to confine an inmate feared to be a threat to institutional security." *Id.* at 474. Discretion must be broad because the "safety of the

institution's guards and inmates is perhaps the most fundamental responsibility of the prison administration." *Id.* at 473 (citing *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). Thus, in order to comply with the Due Process Clause, an inmate "must merely receive some notice of the charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation." *Id.* at 476. In addition, in order to ensure that administrative segregation is not used "as a pretext for indefinite confinement of an inmate," prison officials "must engage in some sort of periodic review of the confinement." *Id.* at 477 n.9. In New York, such reviews must be undertaken at least every 60 days by a three-member committee consisting of a representative of the facility executive staff, a security supervisor, and a member of the guidance and counseling staff. 7 N.Y.C.R.R. § 301.4(d).

In this case, Plaintiff accepts that Defendants provided him with notice of possible administrative segregation, and an opportunity to present his views to the prison officials responsible for determining whether administrative segregation was appropriate. Clearly, his reviews were also sufficiently frequent. Rather, Plaintiff alleges that he did not receive procedural due process during the subsequent reviews of his administrative segregation. Specifically, he alleges that Defendant Griffin, who recommended placing Paintiff in administrative segregation, was biased when he reviewed, as part of a three-person committee, Plaintiff's continuing segregation. Notably, he does not allege bias by the ultimate decision-makers who accepted the committee's recommendations: Deputy Superintendent Nelson and Superintendent Walsh.

Due process dictates that "[a]n inmate subject to a disciplinary hearing is entitled to an impartial hearing officer." *Allen v. Cuomo*, 100 F.3d 253, 259 (2d Cir. 1996) (citing *Wolff v. McDonnell*, 418 U.S. 539, 570-71 (1974)). However, it is "well recognized that prison

disciplinary hearing officers are not held to the same standard of neutrality as adjudicators in other contexts," and the requirements of due process are flexible depending on the situation. *Id.* In this case, nothing about Mr. Griffin's initial interview with Mr. Davis or his participation in the initial administrative segregation hearing gives rise to an inference of bias in the subsequent reviews. "[A] plaintiff-inmate armed with nothing more than conclusory allegations of bias and prejudgment should not be able to defeat a well-supported motion for summary judgment." *Francis v. Coughlin,* 891 F.2d 43, 47 (2d Cir. 1989). And regardless, Mr. Griffin was not the one who ultimately imposed administrative segregation upon Mr. Davis nor the one who ordered that he stay there. Griffin merely participated on panels that made recommendations to the ultimate arbiters, Mr. Nelson (in the first instance) and Mr. Walsh (in the subsequent reviews). The two-step procedure at both the initial and subsequent reviews create backstops against potential bias by a member of the committee and add a layer of protection for inmates' due process rights.

No reasonable juror could find that the process used to review Mr. Davis's administrative segregation violated his due process rights. Defendants' motion for summary judgment is therefore granted and, with no remaining federal claims, I decline to exercise supplemental jurisdiction over any remaining state law claims. *See* 28 U.S.C. § 1367(a). Plaintiff's case is dismissed.

CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment is granted. The Clerk shall terminate all open motions and mark the case closed.

SO ORDERED

Dated: July 17, 2015
New York, New York

ALVIN K. HELLERSTEIN
United States District Judge