UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-3205

CHRISTOPHER H. WEST,
Appellant

v.

MARK EMIG; JEFFREY CARROTHERS

Appeal from the United States District Court
for the District of Delaware
(D.C. No. 1-13-cv-02103)
U.S. Magistrate Judge: Hon. Jennifer L. Hall

Submitted Under Third Circuit L.A.R. 34.1(a)
December 4, 2023

Before: SHWARTZ, CHUNG, and MCKEE, Circuit Judges.

JUDGMENT

This case came to be considered on the record from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on December 4, 2023.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered on October 24, 2022, is hereby

APPENDIX A

AFFIRMED. Costs shall be taxed against Appellant. All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 5, 2023

Certified as a true copy and issued in lieu of a formal mandate on April 12, 2024

Teste: Patricia A Dodszuweit

Clerk, U.S. Court of Appeals for the Third Circuit

Costs taxed in favor of Appellees Jeffrey Carothers and Mark Emig as follows:

Brief.....$48.64

Appendix.....$93.40

Total.....$142.04

NOT PRECEDENTIAL

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(Filed: December 5, 2023)

OPINION*

SHWARTZ, Circuit Judge.

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* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

Christopher West appeals the District Court's judgment in favor of Defendants Mark Emig and Jeffrey Carrothers, former employees of the Delaware Department of Correction, on his Eighth Amendment claim. Because Defendants did not violate a clearly established constitutional right, they are entitled to qualified immunity, and we will affirm.

I

While incarcerated at Howard R. Young Correctional Institution ("HRYCI") in 2011 and 2012, West ate inedible objects on at least seventeen occasions, resulting in eight hospital visits. West was eventually placed on psychological close observation ("PCO") for several weeks where he was monitored for twenty-four hours per day. Nevertheless, West managed to eat foam from his suicide-resistant mattress, resulting in another trip to the hospital. At some point after that incident, West's mattress was removed from his cell for "at most, approximately one month."[1] West v. Emig, No. 13-2103, 2022 WL 13944580, at *2 (D. Del. Oct. 24, 2022). The record shows that the removal of the mattress was done at the direction of mental health professionals. [2]

[1] The District Court deemed West's testimony that he was deprived of a mattress for longer than one month not entirely credible because he also admitted that he lacked awareness and hallucinated at that time and his memories were "fuzzy." West, No. 13-2103, 2022 WL 13944580, at *2 (citing SA 143, 146, 149). He also testified that he could reconstruct the events at HRYCI only after reviewing records from his state court criminal case. Id. (citing SA 146, 149).

[2] Emig, the then-Deputy Warden, testified that, although there is no documentation of this directive "99% of the time" mental health professionals are responsible for placing

In April 2013, West was transferred to James T. Vaughn Correctional Center ("JTVCC"), where he continued to swallow inedible objects. As a result, West was placed on PCO and his mattress was removed from his cell in the mornings and returned in the evenings. According to Carrothers, the then-Security Superintendent, it is JTVCC's practice to remove the mattresses of PCO inmates during daytime hours to prevent them from destroying the mattress, using it to block the observation windows, or harming themselves. Carrothers further testified that the removal was not punitive but was based on West's PCO status.

West sued Emig and Carrothers asserting that they violated his Eighth Amendment rights by depriving him of a mattress. After a one-day bench trial, the District Court found that (1) at HRYCI, West's mattress was removed from his cell for, at most, approximately one month upon the recommendation of mental health professionals; (2) Emig knew that West was without a mattress at HRYCI for at least some period of time; (3) at JTVCC, West's mattress was removed from his cell for sixteen hours during the day, but returned to him at night, pursuant to JTVCC practice for PCO inmates; and (4) the removal of West's mattress at HRYCI and JTVCC was not punitive. West, No. 13-2103, 2022 WL 13944580, at *1-3.

Based on these findings, the District Court held that Emig was entitled to qualified

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inmates on PCO status and taking related actions, like removing mattresses, unless mental health professionals are unavailable, in which case medical or security personnel may act in their place. SA 128.

immunity because West did not identify any cases as of 2011 or 2012 holding that "prison officials cannot deprive a prisoner of a mattress at night for a period of less than one month on the advice of mental health professionals and with the intent and purpose of protecting the prisoner." Id. at *4. Similarly, the Court concluded that Carrothers was entitled to qualified immunity because it was not clearly established in 2013 that "prison officials cannot remove a mattress from a prisoner's cell during the daytime hours for legitimate penological reasons." Id. The Court also held that West did not establish an Eighth Amendment violation because the mattress removals were intended to protect West's well-being and were not unreasonable. Id. Based on these conclusions, the Court entered judgment in favor of Emig and Carrothers.

West appeals.[3]

II[4]

[3] Defendants argue that the appeal should be dismissed because West's brief lacks citations to the record. Appellee Br. at 17-18. Submitting a brief without record citations is inconsistent with Federal Rule of Appellate Procedure 28(a)(8) and Third Circuit Local Appellate Rule 28.3(c). Here, because it is clear which facts West references and we have the entire record before us, we will not deem his failure to comply with these rules as a waiver of the right to review, particularly given our Court's preference to resolve cases on their merits. See Gross v. Stereo Component Sys., Inc., 700 F.2d 120, 122 (3d Cir. 1983) (citation omitted).

[4] The District Court had jurisdiction under 28 U.S.C. § 1331. We have jurisdiction pursuant to 28 U.S.C. § 1291. "When reviewing a judgment entered after a bench trial, we exercise plenary review over the District Court's conclusions of law and review the District Court's findings of fact for clear error." CG v. Pennsylvania Dept. of Educ., 734 F.3d 229, 234 (3d Cir. 2013). A finding of fact is clearly erroneous where "although there is evidence to support it, the reviewing court on the entire evidence is left with the

Qualified immunity shields government officials from civil liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Orsatti v. N.J. State Police, 71 F.3d 480, 483 (3d Cir. 1995) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). To determine whether qualified immunity was properly granted, we conduct a two-prong inquiry, asking whether (1) the conduct violates a constitutional right; and (2) the right was clearly established when it was allegedly violated. Peroza-Benitez v. Smith, 994 F.3d 157, 165 (3d Cir. 2021). Courts may begin their inquiry with either prong, and an answer in the negative to either will entitle the official to qualified immunity. Id.

In this case, we focus only on the clearly established prong. To determine whether a right was clearly established, we first "define the right allegedly violated at the appropriate level of specificity" to "frame the right in light of the specific context of the case, not as a broad general proposition." Id. (internal quotation marks and citations omitted). We then ask "whether that right was clearly established at the time of its alleged violation." Id. (internal quotation marks and citations omitted). We answer this question by looking first to "factually analogous Supreme Court precedent, as well as binding opinions from our own Court," and then examining whether there is a "robust

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definite and firm conviction that a mistake has been committed." Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573 (1985) (quoting United States v. U.S. Gypsum Co., 333 U.S. 364, 394-95 (1948)). Great deference is given to a district court's credibility findings because the trial judge is in a "superior[] . . . position to make determinations of credibility." Id. at 574.

consensus of persuasive authority in the Courts of Appeals." Id. (first citing Fields v. City of Phila., 862 F.3d 353, 361 (3d Cir. 2017); and then quoting L.R. v. Sch. Dist. of Phila., 836 F.3d 235, 248 (3d Cir. 2016). "It is not enough that a rule be suggested by then-existing precedent; the rule's contours must be so well defined that it is clear to a reasonable officer that his conduct was unlawful in the situation he confronted." City of Tahlequah v. Bond, 595 U.S. 9, 12 (2021) (per curiam) (internal quotation marks and citations omitted).

Because qualified immunity requires courts to analyze "the specific conduct of each [official]," Williams v. City of York, 967 F.3d 252, 257 (3d Cir. 2020) (internal quotation marks and citation omitted), we will consider the allegations against Emig and Carrothers separately.

A

Like the District Court, we define the right that Emig allegedly violated as the right of a prisoner not to be deprived of a mattress for a period of at most one month on the advice of mental health professionals and with the purpose of protecting the prisoner from, for example, swallowing parts of his mattress.[5]

[5] The District Court did not clearly err in finding that mental health professionals directed the removal of West's mattress at HRYCI. While Emig testified that there was no documentation of the mental health professionals' request to remove the mattress, he explained that the removal nevertheless would have been at the direction of mental health staff because they determine what restrictions are imposed on PCO inmates. The finding is further supported by West's Behavior Management Plan, which was completed and

We next ask whether this right was clearly established at the time of Emig's conduct in 2011 and 2012. West has not identified, and we have not found, any precedent from either the Supreme Court or our Court as of the time of the alleged deprivation that made it "sufficiently clear that a reasonable official would understand that" removing West's mattress for at most one month at the direction of mental health staff and with the purpose of protecting him from swallowing parts of his mattress would violate the Eighth Amendment. Peroza-Benitez, 994 F.3d at 165 (citation omitted). In fact, our case law leaves open the possibility that conditions that prevent sleep may not amount to an Eighth Amendment violation where, as here, there is a legitimate penological justification. See, e.g., Rhodes v. Chapman, 452 U.S. 337, 346 (1981) (recognizing that the "unnecessary and wanton infliction of pain" prohibited under the Eighth Amendment include "those that are totally without penological justification." (quotation marks and citations omitted)); Mammana v. Fed. Bureau of Prisons, 934 F.3d 368, 372 (3d Cir. 2019) (same); Clark v. Coupe, 55 F.4th 167, 188 (3d Cir. 2022) (acknowledging that where there are "exigent circumstances and legitimate penological

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signed by numerous "mental health staff" and which (1) summarizes West's history of self-injurious behaviors and (2) identifies the plans to correct these actions, including placing West on various levels of PCO and providing various incentives, one of which appears to be receiving a "mattress." SA98. Thus, there was ample evidence to permit the District Court to conclude that the mental health staff ordered the removal of West's mattress at HRYCI. See Anderson, 470 U.S. at 574 (holding that a factfinder's choice between two permissible views of the evidence cannot be clearly erroneous).

justifications," a clearly established right may not have been violated).[6] While we hold here that the right was not clearly established given the penological justifications, this conclusion is heavily dependent on the particular circumstances of this case (e.g. where officials were confronted with a previously unencountered, intractable, serious threat to an inmate's health, and the physical effect, if any was not readily apparent). Furthermore, West has not identified any persuasive authority from other circuits existing at the time of the conduct showing that such a right was clearly established.[7] Clark, 55 F.4th at 188. Nonetheless, we are not holding that there is no clearly established Eighth Amendment right not to be deprived of sleep for an extended period of time for non-penological reasons. Cf. Hutto v. Finney, 437 U.S. 678, 687 (1978) (conditions that "might be tolerable for a few days" may be "intolerably cruel for weeks or months"); Mammana, 934 F.3d at 374 (prisoner stated Eighth Amendment claim where he alleged

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[6] Although Mammana and Clark were decided after the events here, they rely on well-established case law that predated these events. See Mammana, 934 F.3d at 372 n.23 (quoting Wilson v. Seiter, 501 U.S. 294, 308 (1991) (White, J., concurring)); see also Clark, 55 F.4th at 188 (citing Wilson, 501 U.S. at 301-02).

[7] West cites Harper v. Showers for the proposition that "sleep undoubtedly counts as one of life's basic needs," and thus, "[c]onditions designed to prevent sleep, then, might violate the Eighth Amendment." Appellant Br. at 12 (citing 174 F.3d 716, 720 (5th Cir. 1999)). However, Harper is inapt because it did not involve the removal of a mattress at the direction of mental health professionals for the prisoner's protection. Instead, the Harper court found that Harper sufficiently pled an Eighth Amendment claim based on his allegations that, following an escape attempt, he was moved on a weekly basis to "cells next to psychiatric patients who would scream, beat on metal toilets, short out the power, flood the cells, throw feces, and light fires," which "deprived him of cleanliness, sleep, and peace of mind." 174 F.3d at 717, 720.

that several "mutually enforcing" poor sleeping conditions deprived him of sleep and "caused him 'to suffer physical and psychological harm.'"). As a result, Emig is entitled to qualified immunity.

B

As to Carrothers, the District Court appropriately defined the right as the right of a prisoner to not be deprived of a mattress during daytime hours for legitimate penological reasons, including to protect prisoners who require psychological close observation.[8] We conclude that this right was not clearly established at the time of Carrothers's conduct. West provided no Supreme Court or Circuit precedent for his position, and instead, persuasive authority supports a conclusion that daytime mattress restrictions for

[8] Contrary to West's arguments, the District Court found that West's mattress was removed during the daytime hours pursuant to JTVCC's practice for PCO inmates, and that this practice was not to punish West, but for "legitimate penological reasons, including West's safety." West, No. 13-2103, 2022 WL 13944580, at *3. This finding is supported by Carrothers's testimony that mental health and medical staff were responsible for overseeing an inmate on PCO status and that JTVCC's procedure for PCO inmates was to remove the mattress from their cell after breakfast and to return it in the evening to prevent inmates from destroying the mattress or using it to harm themselves or block windows.

legitimate penological reasons do not constitute an Eighth Amendment violation.[9] Therefore, Carrothers is entitled to qualified immunity. [10]

III

For the foregoing reasons, we will affirm the District Court's judgment.[11]

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[9] Alex v. Stalder, 225 F. App'x 313, 313 (5th Cir. 2007) ("[A]llegations regarding the taking of his mattress from his cell during the daytime do not give rise to any Eighth Amendment violation."); Mestre v. Wagner, 2012 WL 300724, at *4 (E.D. Pa. Jan. 31, 2012) ("[D]enying a prisoner a mattress [during day-time hours] for limited time periods is not a deprivation of a minimal standard of living and does not constitute a cruel and unusual punishment."); Gannaway v. Berks Cty. Prison, 2011 WL 1196905, at *6 (E.D. Pa. Mar. 31, 2011) ("[T]he removal of [the] [p]laintiff's mattress during the day does not amount to cruel and unusual punishment.").

[10] West's argument that Carrothers was aware of the deprivation and "deliberately refuse[d] to correct the situation," Appellant Br. at 15, presupposes a constitutional violation. Likewise, to the extent that West argues that Emig and Carrothers are both liable for the combined period of time that West was deprived of a mattress at HRYCI and JTVCC, Appellant Br. 15-16, this argument fails because Emig and Carrothers were personally involved only in the conduct that occurred at their respective jails. Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005) (explaining that, to be liable for a constitutional violation, an individual government defendant must have been personally involved in causing the violation).

[11] We will also deny West's pro se motions. We deny West's pro se motion to remove counsel based on the claim that he did not receive a copy of the brief filed on his behalf, ECF No. 28, because he makes no assertion that counsel failed to confer with him prior to the filing and thus the failure to provide a copy of his brief is not a sufficient basis for removing counsel. We also deny West's pro se motion to supplement, ECF No. 29, because he is represented by counsel and hybrid representation is not permitted. See United States v. Johnson, 899 F.3d 191, 206 (3d Cir. 2018); 3d Cir. L.A.R. 31.3 ("The rule against hybrid representation forbids a party to file a pro se brief supplementing his counseled brief.").

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHRISTOPHER H. WEST, Plaintiff, v. MARK EMIG and JEFFREY CARROTHERS, Defendants.	C.A. No. 13-2103-JLH

MEMORANDUM OPINION

Stephen A. Hampton, GRADY & HAMPTON, LLC, Dover, Delaware; Joseph A. Ratasiewicz, CASAMENTO & RATASIEWICZ, P.C., Media, PA – Attorneys for Plaintiff.

Nicholas D. Picollelli, Jr., Kenneth L. Wan, Deputy Attorneys General, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, DE – Attorneys for Defendant.

October 24, 2022
Wilmington, Delaware

JENNIFER L. HALL, U.S. MAGISTRATE JUDGE

Plaintiff Christopher H. West, an inmate at the James T. Vaughn Correctional Center ("JTVCC"), commenced this action on December 30, 2013, pursuant to 42 U.S.C. § 1983. (D.I. 1.) He alleges that Defendants Mark Emig and Jeffrey Carrothers each subjected him to cruel and unusual punishment in violation of the Eighth Amendment by depriving him of a mattress for certain periods between 2011 and 2013. (*Id.*)

The Court held a bench trial on April 11, 2022.[1] (D.I. 131, Ex. 2 ("Tr. __").) Post-trial briefing is complete. (D.I. 129, 131, 132.) Pursuant to Federal Rule of Civil Procedure 52(a), the following are the Court's findings of fact and conclusions of law.

I. FINDINGS OF FACT[2]

1. Mr. West has a long history of swallowing non-edible items. (JTX 17 at 2.) Such behavior increased in frequency during his periods of incarceration. (*Id.*) Between 2011 and 2013, while he was incarcerated at Howard R. Young Correctional Institution ("HRYCI") and JTVCC, Mr. West swallowed or tried to swallow at least thirty non-edible items, including staples, pens, pencils, plastic straws, screws, paperclips, batteries, the tiles from his prison cell, a spork, a zipper from his mattress, and the foam from his mattress. (D.I. 122 (Pre-Trial Order ("PTO")) ¶¶ 9, 11;

[1] After the District Judge denied-in-part Defendant's motion for summary judgment (D.I. 96), the parties consented to have a Magistrate Judge conduct further proceedings in the case, including trial. (D.I. 115.) The parties also consented to a bench trial. (D.I. 112.)

[2] The following are the Court's findings of fact. In determining the credibility of the witnesses, the Court has taken into account the rationality and internal consistency of the witness's testimony, the extent of detail and coherent nature of the testimony, the manner of testifying by the witnesses, and the degree to which the subject testimony is consistent or inconsistent with other evidence in the case. Moreover, the Court has drawn such reasonable inferences from the credible direct and circumstantial evidence as is permitted by reason and common sense.

Tr. 7, 26–28, 32–33, 81, 84–86, 88–89, 91–92, 105–09, 130; JTX 17 at 2–4.) Mr. West has provided various explanations for his behavior while in prison, including a desire to be taken to the hospital to obtain pain medication, avoiding incarceration, getting attention, an attempt to "manipulate the system," and auditory hallucinations to kill himself. (JTX at 3–4; Tr. 83, 90, 112–113, 115–17.)

2. Mr. West was an inmate at HRYCI in Wilmington, Delaware between July 2011 and February 2012. (PTO ¶ 9; JTX 17 at 1; Tr. 81.) Mr. Emig was the Deputy Warden of HRYCI during that time. (PTO ¶ 8.) Between July and December 2011, Mr. West ate or reported eating non-edible objects on at least seventeen different occasions, resulting in eight outside hospital trips.[3] In September 2011, after Mr. West was hospitalized for eating part of his mattress, HRYCI

[3] Within days of arriving at HRYCI, Mr. West reported that he had swallowed a paper clip. (JTX 17 at 3.) On July 8, 2011, he was taken to the hospital, where it was surgically removed. While at the hospital, he ate a spork. (*Id.*) On July 18, 2011, he reported that he had swallowed a pen and was returned to the hospital. (*Id.*) While at the hospital, he attempted to swallow a pen. (*Id.*) On August 2, 2011, he reported that he swallowed a pencil and screws, and he was returned to the hospital. (*Id.*) Medical providers performed an endoscopy and recovered the pencil as well as a shoestring with metallic rings. (*Id.*) While still at the hospital, he ingested two batteries from a heart monitor and a writing object from a nurse's cart. (*Id.*; Tr. 32–33, 50.) On August 12, 2011, he reported that he ingested a pen at the courthouse; it was later determined that he fabricated the story. (JTX 17 at 3.) On August 13, 2011, he ingested a piece of foam from a suicide-resistant mattress and a spork, and he was brought by ambulance to the hospital. (*Id.*; Tr. 32–33, 84–85.) On October 14, 2011, he swallowed more than one spork, a pen, and a pencil. He was sent to the hospital, where providers performed a laparoscopic procedure and removed nine foreign bodies. (JTX 17 at 3.) On October 22, he reported that he swallowed pens, pencils, and a spork the day before. (*Id.* at 4.) On October 25, 2011, he ingested tiles from the floor of his cell and was sent to the hospital. (*Id.*; Tr. 33, 50–51.) He returned to prison on October 27 but he went back to the hospital after he pulled out his catheter and ate it. (JTX 17 at 4.) On October 28, 2011, he ingested a bottle opener. He spoke to his mother a few days later and told her that his ingestion of objects was an attempt to "manipulate the system." (*Id.*) On November 13, 2011, while in prison, he ate a plastic cup. (*Id.*) On November 23, he reported that he inserted something into his penis and ingested a pencil. (*Id.*) An on-site ultrasound was completed but there was no evidence that he had ingested a foreign body. (*Id.*) He asked to go to the hospital multiple times because he did not want to spend Thanksgiving in prison; instead, providers performed a procedure at HRYCI to remove what appeared to be a piece of rice and a small piece of concrete from his penis. (*Id.*) On

mental health staff determined that it should be removed from his cell for his own safety. (Tr. 10–13, 26–27, 84–85.) Mr. Emig's security officers removed Mr. West's mattress in accordance with the determination of mental health staff. (Tr. 12, 31–32.)

3. The parties dispute whether Mr. West was ever without a mattress at night at HRYCI and, if so, how long. They also dispute whether Mr. Emig knew that Mr. West was without a mattress at night and, if so, whether he knew how long. At trial, Mr. Emig testified that, at some point, the mental health unit informed him that they had decided that the mattress should be removed from Mr. West's cell for his own safety, but Emig could not recall the details about when that occurred or for how long, or if the mattress was returned at night. (Tr. 10, 20–21, 24–29, 30, 33, 36, 41.) Mr. Waltz, a Correctional Officer at HRYCI, testified that he didn't see a mattress in West's cell for a period of "a month or so" after he had ripped his mattress open and swallowed the stuffing. (Tr. 45–46, 50, 54.) However, Mr. Waltz worked the daytime shift, and he "c[ouldn't] say" if West was given a mattress at night during that time. (Tr. 51–53.) Mr. West testified that he was deprived of a mattress, including at night, for two periods of time: for one month starting in September (after he swallowed mattress foam); and again for two-and-a-half months between mid-October 2011 (after he swallowed additional items) and January 2012. (Tr. 84–86, 96.) Mr. West further testified that, without the mattress, he slept with a blanket at night on the floor of his cell, which first consisted of tile and, later, concrete.[4] (Tr. 91.) West also testified that he personally asked Emig to return his mattress. (Tr. 88–89, 99.)

November 24, 2011 (Thanksgiving Day), he reported that he had ingested a pen and toilet paper, but all items were accounted for and he remained at HRYCI. (*Id.*) When prison staff stopped taking West to the hospital absent evidence that he'd actually swallowed something inedible, he stopped making false reports of swallowing. (Tr. 112–17; JTX 17 at 3–4.)

[4] Prison staff removed the tiles from Mr. West's cell after he ate them. (Tr. 90–91.) Staff also removed the screws from the outlets, toilet, and windows so he couldn't eat them. (Tr. 51.)

4. The Court only partially credits Mr. West's testimony. The Court finds by a preponderance of the evidence that West lacked a mattress at night at HRYCI for at least some period of time, which was, at most, approximately one month. The only evidence that Mr. West was deprived of a mattress for longer is his own testimony, which is not entirely credible. West's memories from that time period were "fuzzy"; indeed, by his own admission, he lacked "awareness" and had hallucinations around the same time he says he lacked a mattress. (Tr. 95–96, 106, 119.) Mr. West testified that "the time would kind of blur," and he could only "piece [] together" the sequence of events at HRYCI after reviewing records from his Superior Court criminal case, which, he says, refreshed his recollection about "what was going on with [him] based on those dates." (Tr. 108–110, 119–20.) (He did not present those records at trial.) Although Mr. West testified that he complained to prison medical staff about pain from sleeping on the floor, he presented no medical records documenting any such complaints. (Tr. 111.) Nor are there records documenting any injuries from sleeping on the floor. Further, Mr. West's testimony that he was forced to sleep on the floor for two-and-a-half months between mid-October 2011 and January 2012 is inconsistent with other evidence of record, including records documenting that he was in the hospital in late October, documentary evidence suggesting that he had at least a plastic sleeping boat for some of the time that he claims he was forced to sleep on the floor, and medical records from various points during that time period where he reported sleep "within normal limits." (JTX 19; JTX 28; JTX 29; JTX 17 at 3–4; JTX 32; Tr. 48–49.)

5. The evidence of record, including evidence that Mr. Emig was being updated about West during the time he was at HRYCI, permits a reasonable inference that Emig knew that West lacked a mattress at night for at least some period of time; however, the evidence of record is

insufficient to establish by a preponderance of the evidence that Emig knew that West was without a mattress for a month or longer. (Tr. 10–13, 18, 20, 26–28, 87–90.)

6. The Court finds that, during the times when the mattress was removed from Mr. West's cell, it was not because Mr. Emig was punishing West or indifferent to his well-being. (Tr. 33, 41.) HRYCI staff had never encountered an inmate with such a serious, ongoing ingesting issue, and they were unsure about how to handle an inmate who was eating just about everything he could get his hands on. (Tr. 37, 88, 104–105.) Mr. Emig was concerned about Mr. West's safety during his stay at HRYCI and, at one point, Emig even called West's mother. (Tr. 9–10, 87; JTX 27.) In December 2011, West was referred to a psychologist for a behavioral management consultation, and she concluded that West's "choice to ingest or insert foreign objects [wa]s an attempt to avoid incarceration and not due to a major mental illness" and that his behavior was "reinforced by [West] receiving pain medication." (JTX 17 at 4; *id.* at 2 (psychological evaluation noting that West "endorsed certain combinations of features that are atypical or unusual in clinical populations, but which tend to be common amongst individuals feigning mental disorder").) Prison staff took Mr. West to the hospital multiple times for care after he reported eating objects. And when West returned to HRYCI, the staff kept him on Psychological Close Observation ("PCO") for his own safety, where he was monitored closely (sometimes one-on-one) for twenty-four hours a day. (Tr. 8–11, 13–16, 47–49, 107–108, 120–22; JTX 17 at 2–4; JTX 20; JTX 22.) But even continuous one-on-one observation did not prevent Mr. West from ripping open a suicide-resistant (non-rip) mattress, swallowing part of it, and sending himself back to the hospital. (Tr. 32–33, 121–22.) The mattress was subsequently removed from West's cell for some period (or periods) of time, but it was not as a punishment; rather, it was based upon the recommendation and decision of the mental health staff. (Tr. 11–13, 33, 41.) Having considered all of the evidence

of record, the Court concludes that Mr. West's treatment at HRYCI was inconsistent with a finding that any HRYCI staff were indifferent to Mr. West's medical needs or well-being.

7. In April 2013, Mr. West was transferred to JTVCC. At that time, Defendant Carrothers was the Security Superintendent. (PTO ¶¶ 10–11; Tr. 57.) Mr. West was initially provided a mattress at JTVCC. (Tr. 96–97.) At some point after his arrival, he started swallowing items again, including a pen. (PTO ¶ 11; Tr. 63–64, 72–73, 97.) He also tried to swallow the zipper from his mattress. (Tr. 130.) He was again placed on PCO, and for some period of time he was on PCO Level I. (Tr. 58, 63.) Pursuant to JTVCC practice, inmates on PCO Level I had their mattresses removed in the morning and returned to them in the evening. (Tr. 61, 66, 72–73 (explaining that the daytime mattress restriction prevented inmates from using their mattress to block the windows used to observe them), 131–32, 134.)

8. Mr. West has not demonstrated by a preponderance of the evidence that he was ever deprived of a mattress for longer than 16 hours at JTVCC or that he spent a single night without a mattress at JTVCC. The only evidence that Mr. West lacked a mattress at night is his own testimony that he slept on the floor for a three-month period from April to June 2012 (Tr. 97, 102, 110), which I do not credit for multiple reasons, including that it is inconsistent with contemporaneous documentary evidence suggesting that he was sleeping well and had a bed. (JTX 4; JTX 7; JTX 12; JTX 14.) And although Mr. West testified that he complained to medical staff about pain from sleeping on the floor, he presented no records documenting any such complaints or injuries. (Tr. 111–112.)

9. The Court finds that JTVCC staff did not remove the mattress from Mr. West's cell during the daytime hours to punish him; rather, it was for legitimate penological reasons, including

West's safety. The Court further finds that Mr. Carrothers was not indifferent to Mr. West's health or well-being.

II. CONCLUSIONS OF LAW

10. The Eighth Amendment ban on cruel and unusual punishment requires prison officials to provide humane conditions of confinement to incarcerated persons. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). To prove an Eighth Amendment violation based on an alleged deprivation, a prisoner must establish that (1) the deprivation was "objectively, sufficiently serious; a prison official's act or omission must result in the denial of the minimal civilized measure of life's necessities; and (2) the prison official must have been deliberately indifferent to inmate health or safety." *Porter v. Pa. Dep't of Corrs.*, 974 F.3d 431, 441 (3d Cir. 2020) (cleaned up) (citing *Farmer*, 511 U.S. at 834). An official is "deliberately indifferent" if he "knows of and disregards an excessive risk to inmate health or safety." *Id.* (citing *Farmer*, 511 U.S. at 837); *Farmer*, 511 U.S. at 834 ("To violate the Cruel and Unusual Punishments Clause, a prison official must have a 'sufficiently culpable state of mind.'" (quoting *Wilson v. Seiter*, 501 U.S. 294, 297 (1991)).

11. "Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Id.* "When properly applied, [qualified immunity] protects all but the plainly incompetent or those who knowingly violate the law." *Id.* (quoting *Ashcroft v. al–Kidd*, 563 U.S. 731, 743 (2011)). There is no requirement that the plaintiff identify "a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* "[C]ourts may grant

qualified immunity on the ground that a purported right was not 'clearly established' by prior case law, without resolving the often more difficult question whether the purported right exists at all." *Reichle,* 566 U.S. at 664.

12. Mr. Emig is entitled to qualified immunity. Mr. West has not identified a Supreme Court or Third Circuit case (or any other case) preceding the alleged deprivation that says that prison officials cannot deprive a prisoner of a mattress at night for a period of less than one month on the advice of mental health professionals and with the intent and purpose of protecting the prisoner (including by preventing him from harming himself by eating the mattress).[5] No precedent on the books in 2011 to 2012 would have made clear to Mr. Emig that he was violating the Constitution with respect to Mr. West. In short, the Court cannot say that only someone "plainly incompetent" or who "knowingly violate[d] the law" would have acted as Emig did. *Ashcroft*, 563 U.S. at 743.

13. Mr. Carrothers is also entitled to qualified immunity. Mr. West has not identified a Supreme Court or Third Circuit case (or any other case) preceding the alleged deprivation that says that prison officials cannot remove a mattress from a prisoner's cell during the daytime hours for legitimate penological reasons, including to protect prisoners who required psychological close observation. No precedent on the books in 2013 would have made clear to Mr. Carrothers that he was violating the Constitution with respect to Mr. West. Again, the Court cannot say that only

[5] Mr. West cites *Mammana v. Federal Bureau of Prisons*, 934 F.3d 368 (3d Cir. 2019), and *McClure v. Haste*, 820 Fed. App'x 125 (3d Cir. 2020), but those cases postdate the alleged constitutional violations here. Regardless, both of those cases leave open the possibility that a mattress might constitutionally be withheld when there is an adequate penological justification. Certainly, neither case says that the Constitution prevents a prison official from withholding a mattress from a prisoner for less than a month to prevent him from harming himself by eating it. Unlike in *McClure*, where the inmate's "misconduct was completely unrelated to the mattress restriction," 820 F. App'x at 131, here the mattress restriction was directly related to Mr. West's self-harming behavior.

someone "plainly incompetent" or who "knowingly violate[d] the law" would have acted as Carrothers did. *Id.*

14. In addition, Mr. West has not established an Eighth Amendment violation for at least the reason that neither Defendant acted with a culpable state of mind or with deliberate indifference to Mr. West's health or safety. Prison officials had a clear need to prevent West from harming himself. The short-term removals of his mattress were intended to protect his health and safety and were not unreasonable courses of action under the circumstances confronting Defendants. *Farmer*, 511 U.S. at 845 ("[P]rison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause.").

III. CONCLUSION

For the above reasons, the Court finds that Defendants are entitled to qualified immunity. The Court further finds that Plaintiff has not met his burden to establish an Eighth Amendment violation.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-3205

CHRISTOPHER H. WEST,
Appellant

v.

MARK EMIG; JEFFREY CARROTHERS

(D.C. Civil No. 1-13-cv-02103)

SUR PETITION FOR PANEL REHEARING

Present: SHWARTZ, CHUNG, and McKEE, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby

O R D E R E D that the petition for rehearing by the panel is denied.

BY THE COURT,

s/Patty Shwartz
Circuit Judge

Dated: April 4, 2024

Tmm/cc: Christopher H. West
Nicholas D. Picollelli, Jr., Esq.
Kenneth L. Wan, Esq.

Additional material from this filing is available in the Clerk's Office.