

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

GORDON A. BOWMAN,)	
)	
Plaintiff,)	Case No. 2:01CV71034
)	
v.)	OPINION AND ORDER
)	
J. LARGE, ET AL.,)	By: James P. Jones
)	United States District Judge
Defendants.)	

Gordon A. Bowman, Pro Se Plaintiff; Philip C. Hollowell, Assistant Attorney General of Virginia, Richmond, Virginia, for Defendants.

The question before the court is whether a state prisoner’s § 1983 claim alleging excessive force by guards should be dismissed because it constitutes an impermissible collateral attack on his institutional disciplinary conviction. For the reasons stated below, I find that the action is not barred.

The plaintiff, an inmate at Red Onion State Prison, filed this pro se suit for damages against Correctional Officers J. Large and S. Mullins pursuant to 42 U.S.C.A. § 1983 (West 1994 & Supp. 2002) alleging various constitutional claims arising from an incident that occurred in the prison on October 31, 2001. The defendants moved for summary judgment and the motion was granted as to all claims except one excessive force claim. The defendants then filed a Supplementary Motion

for Summary Judgment asserting that a judgment in favor of the plaintiff on the remaining excessive force claim would impermissibly invalidate the plaintiff's institutional disciplinary conviction. The defendants have filed a brief in support of their motion and the plaintiff has filed materials in response such that the motion is now ripe for decision.¹

The plaintiff's remaining excessive force claim arose under the following circumstances. On the morning of October 31, 2001, Officers Large and Mullins were responsible for escorting prisoners to the showers. When they arrived at the plaintiff's cell, a fight broke out between the plaintiff and the officers.

The plaintiff contends that after he was handcuffed and placed in leg irons, but prior to transport to the showers, Officers Mullins and Large entered his cell, throwing wild, unprovoked punches. They further allegedly grabbed the plaintiff's groin, threw him against a wall, and struck the plaintiff on the head, breaking his skin. In self defense, the plaintiff slipped out of his left handcuff, swung at Officer Mullins, and grabbed the legs of the officers.

Officers Mullins and Large assert that when they entered the plaintiff's cell, he immediately started swinging at Officer Mullins. In defense, Mullins struck the

¹ I will dispense with oral argument because the facts and legal contentions are adequately before the court and argument would not significantly aid the decisional process.

plaintiff on the head, and both officers subsequently wrestled the plaintiff to the ground and re-handcuffed him. Three other officers then placed the plaintiff in ambulatory restraints at the direction of the warden.

Following this incident, Officer Mullins filed an institutional charge against the plaintiff and on November 5, 2001, he was found guilty by a hearing officer of aggravated assault against a non-inmate. The hearing officer's written reason for his decision was as follows: "[O]fficer Mullins stated as him and officer Large was removing inmate Bowman from his cell inmate Bowman jumped up and slid out of the handcuffs and turned and hit officer Mullins with his right fist under the officers [sic] right eye the fist still had the cuffs on that hand inmate made no real statement at the hearing." The hearing officer imposed punishment on the inmate consisting of a loss of 180 days of good time credit and thirty days of commissary and telephone privileges. Bowman sought further administrative review and the assistant warden reduced the penalty by restoring commissary and telephone privileges.

In *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), the Supreme Court ruled that a state prisoner cannot base a § 1983 action on a ground that would "necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement" *Id.* at 486. A purpose of the rule is to prevent evasion of the exhaustion of state remedies requirement in habeas corpus actions, a requirement not present under §

1983. *See id.* 490-91 (Thomas, J., concurring). Later, in *Edwards v. Balisok*, 520 U.S. 641, 648 (1997), the Court extended the *Heck* rule to prison disciplinary proceedings involving the loss of good time credit. Relying on *Edwards*, the defendants here contend that for the plaintiff to prevail on his § 1983 excessive force claim, he must prove that the facts found by the institutional hearing officer in convicting the plaintiff of assault were incorrect, thus implying the invalidity of his disciplinary conviction and sentence. However, I find that the plaintiff's § 1983 claim is not precluded by the principles of *Heck* or *Edwards*.

The plaintiff in *Edwards* was convicted of four prison infractions and sentenced to a loss of thirty days good time credit. He later filed a § 1983 claim alleging that the institutional disciplinary proceedings violated his due process rights because the hearing officer in his case was biased and concealed exculpatory witness statements. The Supreme Court held that because “[t]he principal procedural defect complained of by [the prisoner] would, if established, necessarily imply the invalidity of the deprivation of his good-time credits,” his § 1983 claim was not cognizable unless or until the plaintiff could show that the conviction or sentence had been invalidated. *Id.* at 646-48.

Although the plaintiff in the present case was convicted of assault in an institutional proceeding, his §1983 claim does not challenge the integrity or

procedures of that hearing, as in *Edwards*. The damages claimed by the plaintiff do not arise from any deprivation that occurred as a result of the institutional proceedings, but rather from the use of force by the officers. See *Beeson v. Fishkill Corr. Facility*, 28 F. Supp. 2d 884, 887 (S.D.N.Y. 1998) (holding that § 1983 claim alleging Eighth Amendment violations by correctional officers not barred by *Edwards* despite institutional conviction).

Moreover, the determination at the prison hearing does not necessarily preclude the plaintiff's present claim. To prevail on his claim, the plaintiff must show that (1) the defendants used force against the plaintiff; (2) the use of such force was excessive and applied maliciously and sadistically for the very purpose of causing the plaintiff harm and not in a good faith effort to achieve a legitimate purpose; and (3) the plaintiff suffered harm as a direct result of this use of force. See *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992). The plaintiff may still prevail on his claim even accepting that the institutional hearing officer found that he had assaulted Officer Mullins. For example, it is possible that Bowman initiated the altercation by assaulting Officer Mullins but the officers then proceeded to use excessive force.

In *Marquez v. Gutierrez*, 51 F. Supp. 2d 1020, 1021-22 (E.D. Cal. 1999), a state prisoner similarly sued correctional officers under §1983 alleging use of excessive

force. Although Marquez had been convicted of battery at a prison disciplinary hearing, the court held that this conviction did not bar the §1983 action:

Given that the case at bar relates to accusations of excessive force on the prison yard, a jury could conclude that, even if plaintiff was culpable in the melee, defendant nonetheless used excessive force. It is also conceivable that a jury could find, as plaintiff also contends, that the use of lethal force is never justified against an unarmed inmate. The variety of potential findings demonstrate that a judgment in plaintiff's favor "would not necessarily imply the invalidity" of his disciplinary conviction, even though under some circumstances it might do so.

Id. at 1025 (quoting *Heck v. Humphrey*, 512 U.S. at 487 n.7).

For the foregoing reasons, it is **ORDERED** that the defendants' Supplemental Motion for Summary Judgment [Doc. 33] is **DENIED**.

ENTER: May 29, 2003

United States District Judge