

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES E. GILMAN,)	
)	
Plaintiff,)	
vs.)	NO. 2:03-cv-00044-WGH-RLY
)	
VICTOR MANZO,)	
EVELYN RIDLEY-TURNER,)	
DAVE BREWER,)	
CRAIG HANKS,)	
WILLIAM TATUM,)	
NANCY BROGLIN,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES E. GILMAN,)
)
 Plaintiff,)
)
 v.) 2:03-cv-44-RLY-WGH
)
 VICTOR MANZO and DAVE BREWER,)
)
 Defendants.)

ENTRY ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. Introduction

This matter is before the court on Defendants' Motion for Summary Judgment filed November 1, 2004. Plaintiff filed a Response on November 30, 2004, Defendants filed their Reply Brief on December 8, 2004, and Plaintiff filed a Surreply on December 16, 2004.

II. Summary Judgment Standard

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The motion should be granted so long as no rational fact finder could return a verdict in favor of the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Thus, a court's ruling on a motion for summary judgment is akin to that of a directed verdict, as the question essentially for the court in both is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided

that one party must prevail as a matter of law.” *Id.* at 251-52. When ruling on the motion, the court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences therefrom in that party’s favor. *Id.* at 255. If the nonmoving party bears the burden of proof on an issue at trial, that party “must set forth specific facts showing that there is a genuine issue for trial.” Fed.R.Civ.P. 56(e); *see also Silk v. City of Chicago*, 194 F.3d 788, 798 (7th Cir. 1999). Lastly, the moving party need not positively disprove the nonmovant’s case; rather, it may prevail by establishing the lack of evidentiary support for that case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

III. Analysis

Defendants filed this motion for summary judgment claiming that there are no genuine issues of material fact because Plaintiff has no right to prison employment under the Due Process Clause of the Fourteenth Amendment and because their actions were not a violation of the Equal Protection Clause.

A. Plaintiff’s Due Process Claim

Plaintiff claims that he was wrongfully terminated by Defendants from his job in the Wire Harness Shop at the Wabash Valley Correctional Facility. Plaintiff, however, fails to state a cognizable due process claim. There must be a legitimate property or liberty interest in order to trigger the requirements of substantive due process. *Jeffries v. Turkey Run Consol. Sch. Dist.*, 492 F.2d 1 (7th Cir. 1974). The Seventh Circuit has clearly indicated that a prisoner has no property or liberty interest in prison employment. *Garza v. Miller*, 688 F.2d 480, 485 (7th Cir. 1982). The court, therefore, rejects Plaintiff’s due process claim.¹

¹In some instances, an individual can have state-created liberty or property interests. The United States Supreme Court has emphasized that “[a] State may create a liberty interest

B. Plaintiff's Equal Protection Claim

Plaintiff also raises an equal protection claim.² The gist of Plaintiff's claim is that Defendants were the supervisors of the Wire Harness Shop and that Defendants treated Caucasian inmates differently than non-Caucasians. Specifically, Plaintiff argues that Defendants fired Plaintiff and several other non-Caucasian inmates for faulty work while Caucasian inmates were permitted to remain in the Wire Harness Shop for similar problems. Additionally, Plaintiff claims that the shop has a practice of rehiring Caucasian inmates while non-Caucasians are less likely to regain employment.

The court in this case concludes that Plaintiff has raised legitimate concerns about the practices in the Wire Harness shop, and summary judgment is not warranted. The Equal Protection Clause of the Fourteenth Amendment is charged with the prevention of official conduct that discriminates on the basis of race. *Washington v. Davis*, 426 U.S. 229, 239, 96 S.Ct. 2040, 2047, 48 L.Ed.2d 587 (1976). "Prisoners are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination based on race." *Wolf v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2974, 41 L.Ed.2d 935 (1974). Absent some compelling state interest, racial discrimination in the administration of prisons violates the Fourteenth Amendment. *Black v. Lane*, 824 F.2d 561, 562 (7th Cir. 1987).

protected by the Due Process clause through its enactment of certain statutory or regulatory measures." *Hewitt v. Helms*, 459 U.S. 460, 469, 103 S.Ct. 864, 870, 74 L.Ed.2d 675 (1983). However, Plaintiff in this case has failed to point to any such interest in prison employment that the state of Indiana has created.

²While Plaintiff's complaint does not explicitly state a claim under the Fourteenth Amendment's Equal Protection Clause, the court is mindful that Plaintiff is proceeding *pro se* and that courts must liberally construe the pleadings of *pro se* litigants. *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).

It is important to note, however, that disparate impact alone is not sufficient to support the finding of an equal protection violation. *See e.g., Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264-65, 97 S.Ct. 555, 562-63, 50 L.Ed.2d 450 (1977). Plaintiff must, therefore, demonstrate that Defendants purposefully and intentionally discriminated against him. *Meriwether v. Faulkner*, 821 F.2d 408, 415 n.7 (7th Cir. 1987).³ “Purposeful discrimination implies that the decision-maker singled out a particular group for disparate treatment and ‘selected his course of action for the purpose of causing its adverse effects on the identifiable group.’” *Azeez v. DeRobertis*, 568 F.Supp. 8, 10 (N.D. Ill. 1982) (quoting *Shango v. Jurich*, 681 F.2d 1091, 1104 (7th Cir. 1982)).

However, it is not necessary for discrimination to be the sole purpose for the action. Plaintiff need only show that a discriminatory purpose was a “motivating factor” in the administrative decision. *Arlington Heights*, 429 U.S. at 265. In many cases, a plaintiff attempting to show an equal protection violation will struggle to find direct evidence of discrimination. More often than not, the proof provided will consist of circumstantial evidence including statistical evidence of racial disparity. *Santiago v. Miles*, 774 F.Supp. 775, 797 (W.D.N.Y. 1991). While disparate treatment alone is not enough to raise a *prima facie* case, “the Court can certainly consider the impact on minorities of official conduct as circumstantial evidence of discriminatory intent. Evidence of such an impact may provide the ‘starting point’ for any examination and analysis of discriminatory motive.” *Id.*⁴ (citing *Arlington Heights*, 429

³Plaintiff “must show intentional discrimination against him because of his membership in a particular class, not merely that he was treated unfairly as an individual.” *Huebschen v. Dep’t of Health and Social Services*, 716 F.2d 1167, 1171 (7th Cir. 1983).

⁴The *Santiago* court explained that “[i]n Equal Protection cases alleging discrimination on account of race, statistical evidence has long been considered crucial in proving

U.S. at 266).

In Plaintiff's case, there is adequate evidence to survive summary judgment. Plaintiff has provided documentation that suggests that the overall makeup of inmates in the Wabash Valley Correctional Facility consists of 43 percent Caucasian and 57 percent non-Caucasian individuals whereas the makeup of employees in the Wire Harness Shop include 62 percent Caucasian and 38 percent non-Caucasian individuals. Plaintiff's Response to Defendants' Motion for Summary Judgment at Attachment 2. Additional documentation and evidence provided by Plaintiff suggests that numerous Caucasian inmates are rehired after being terminated from a position in the Wire Harness Shop while non-Caucasians are routinely not rehired. *Id.*⁵ In addition, Plaintiff has provided sworn testimony from several fellow inmates that suggest that events in June of 2002 lead to the termination of several employees within the Wire Harness Shop. (*See* Affidavit of Stephen Thompson; Affidavit of Darryl Maxwell; Affidavit of Joseph Castillo; Affidavit of Theodore Brewer). These statements indicate that there were a total of eight individuals terminated in June of 2002, that six of the individuals were allegedly terminated for

discriminatory intent." *Santiago*, 774 F.Supp. at 798 (citing *Arlington Heights*, 429 U.S. at 266; *Int'l Brotherhood of Teamsters v. United States*, 431 U.S. 324, 339, 97 S.Ct. 1843, 1856, 52 L.Ed.2d 396 (1977)). The Court added that "[s]uch statistical proof together with other evidence can prove discriminatory intent and establish a *prima facie* case. In fact, in some cases statistical evidence alone may establish a *prima facie* case." *Id.* (citing *Hudson v. Int'l Business Machines Corp.*, 620 F.2d 351, 355 (2d Cir. 1980)). If Plaintiff were to seek an inference of discrimination based solely on statistical evidence, the disparity between Caucasians and non-Caucasians would have to be so large and significant that it could not be caused by chance. *Id.* (citations omitted).

⁵According to the Federal Rules of Civil Procedure plaintiff is permitted to provide a summary of any voluminous writings provided that the originals or duplicates are made available to defendant for copying. Fed. R. Civ. P. 1006. The court concludes that, for the purposes of this summary judgment analysis, Plaintiff's documentation would satisfy Rule 1006 requirements.

producing a defective harness, but that several of these individuals were actually terminated before the investigation into the faulty harness began. (Affidavit of Stephen Thompson; Affidavit of Theodore Brewer). The statements also suggest that non-Caucasian inmates were treated differently from Caucasians. Specifically, they reference an incident also from June of 2002 in which a Caucasian inmate, Steve Pigg, was responsible for the production of a defective harness but was not terminated.⁶ (Affidavit of Joseph Castillo). The statements also indicate that, of the eight individuals terminated in June of 2002, seven were non-Caucasian while only one was Caucasian, and the Caucasian was rehired while five of the seven non-Caucasians were “permanently separated.” (Affidavit of Darryl Maxwell). Finally, Earl Russelburg, another inmate employed in the Wire Harness Shop suggested that after the alleged incident, the inmates were assigned to check each other’s work for errors, that he checked plaintiff’s work, and that throughout the checking of over 200 harnesses plaintiff “never had any defective return.” (Declaration of Earl Russelburg).

In light of these allegations, the court concludes that summary judgment is not warranted. The court notes that Defendants each claim that Plaintiff was terminated for the production of a defective harness and not for any racially motivated reason. (See Declaration of David Brewer; Declaration of Victor Manzo). However, any determinations of credibility should not be handled in a summary judgment setting, but should be reserved for trial. *Black*, 824 F.2d at 561.⁷ In the light most favorable to Plaintiff, a jury could conclude that non-Caucasians are

⁶As there is conflicting testimony, it is unclear whether this was actually a separate incident or if it was, in fact, the incident that resulted in Plaintiff’s termination.

⁷The Seventh Circuit in *Black v. Lane* reversed a United States Magistrate Judge’s finding of summary judgment because the judge erroneously “chose to believe the conclusory statements by the prison officials”

treated differently from Caucasians based on the statistical evidence, the evidence suggesting that Caucasians are treated more favorably during the rehiring process, and the evidence surrounding Plaintiff's termination. There are, therefore, still genuine issues of fact, and Defendants are not entitled to summary judgment. Fed.R.Civ.P. 56(c).

IV. Conclusion

Defendants' Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART**. As it relates to Plaintiff's due process claim, Defendants' motion is **GRANTED** and as it relates to Plaintiff's equal protection claim, Defendants' motion is **DENIED**.

IT IS SO ORDERED this ____day of February 2005.

RICHARD L. YOUNG, DISTRICT JUDGE
United States District Court
Southern District of Indiana

Copies to:

Richard M. Bramer
INDIANA STATE ATTORNEY GENERAL
rbramer@atg.state.in.us

JAMES E. GILMAN
DOC # 110906
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838