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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
Larry Edward Hendricks, Plaintiff, v. South Carolina Department of Mental Health, Defendant.	Civil Action No. 2014-CP-40-03397 **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

This matter comes before the Court by way of Plaintiff's Motion to Alter and/or Amend the Judgment pursuant to Rule 59(e), SCRCP dated November 11, 2016. Specifically, Plaintiff asks this Court to reconsider its Order Granting Defendant's Motion for Summary Judgment that was filed October 27, 2016.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRCP, to reconsider this Court's October 27, 2016, Order. Furthermore, pursuant to Rule 59(f), SCRCP, the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
November 22, 2016

G. Thomas Cooper, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
Larry Edward Hendricks, Plaintiff, v. South Carolina Department of Mental Health, Defendant.	Civil Action No. 2014-CP-40-03397 **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter came before me on August 2, 2016 for a hearing on the Defendant's Motion for Summary Judgment (the "Motion"). Appearing at the hearing were Matthew G. Gerrard of Barnes, Alford, Stork & Johnson, LLP on behalf of the Defendant and Plaintiff Larry Edward Hendricks, *pro se*. After carefully reviewing the record, the materials submitted by the parties, the applicable law, and the arguments presented at the hearing, and as discussed in more detail below, I hereby GRANT the Motion.

FACTUAL AND PROCEDURAL BACKGROUND

The Plaintiff is a resident of the Sexually Violent Predator Treatment Program (the "SVPTP"), which is administered by SCDMH pursuant to the Sexually Violent Predator Act, S.C. Code Ann. §§ 44-48-10 et seq. (the "Act"). He was committed to the custody of SCDMH on February 4, 2014. As permitted by the Act, SCDMH has entered into an Interagency Agreement with the South Carolina Department of Corrections ("SCDC") whereby SVPTP residents are housed in the Edisto and Congaree units within the Broad River Correctional Institution ("BRCI") in Columbia. See, e.g., In re Treatment and Care of Luckabaugh, 351 S.C. 122, 136, 568 S.E.2d 338, 345 (2002) (describing the Interagency Agreement). Under the agreement, SCDMH is responsible for the control, care, and treatment of SVPTP residents as

well as for providing internal guards, routine maintenance, and sanitation. Id. SCDC provides outside security, meals, laundry services, and chaplain services. Id. "In sum, while the SCDC provides a secured environment to house the sexually violent predators, the [SC]DMH provides the care and treatment." Id.

The purpose for the confinement of the residents of the SVPTP is set forth in S.C. Code Ann. § 44-48-20, which states as follows:

> The General Assembly finds that a mentally abnormal and extremely dangerous group of sexually violent predators exists who require involuntary civil commitment in a secure facility for long-term control, care, and treatment. The General Assembly further finds that the likelihood these sexually violent predators will engage in repeated acts of sexual violence if not treated for their mental conditions is significant. Because the existing civil commitment process is inadequate to address the special needs of sexually violent predators and the risks that they present to society, the General Assembly has determined that a separate, involuntary civil commitment process for the long-term control, care, and treatment of sexually violent predators is necessary. The General Assembly also determines that, because of the nature of the mental conditions from which sexually violent predators suffer and the dangers they present, it is necessary to house involuntarily-committed sexually violent predators in secure facilities separate from persons involuntarily committed under traditional civil commitment statutes. The civil commitment of sexually violent predators is not intended to stigmatize the mentally ill community.

In his pleadings, the Plaintiff alleges SCDMH is violating various rights afforded to him by South Carolina law and the United States Constitution. He filed his initial Complaint on May 23, 2014, alleging violations primarily pertaining to the amount and quality of the food with which he is provided. SCDMH filed its Answer to the Complaint on July 28, 2014. Thereafter, on August 8, 2014, the Plaintiff filed his Reply to Defendant's Answer and Motion to Strike, in which he challenged various averments in SCDMH's Answer. On August 25, 2014, the Plaintiff filed a pleading—purported to be an Amended Complaint—adding additional allegations to his Complaint pertaining to SCDMH's alleged failure to properly accommodate practices dictated by his Islamic faith. On September 9, 2014, SCDMH filed a Motion to Strike Plaintiff's

Amended Complaint, asserting the pleading was not actually an amendment pursuant to Rule 15(a), SCRCP, but was in the nature of a supplemental pleading pursuant to Rule 15(d), SCRCP, and must be stricken because it was filed without leave. Finally, on September 18, 2014, the Plaintiff filed a Motion for Leave to File Supplemental Complaint questioning whether he may be forced to room with another sexual predator.

All of the aforementioned motions were heard by The Honorable Deadra L. Jefferson on October 14, 2014. At the hearing, the Plaintiff and counsel for SCDMH signed a consent Order directing the Plaintiff to file a Second Amended Complaint within twenty-one (21) days after the entry of the Order. The Order was subsequently entered on December 1, 2014, and thus the Second Amended Complaint was due no later than December 22, 2014. The consent Order directed the Plaintiff to "file a Second Amended Complaint incorporating all of—but no more than—the allegations contained in his Complaint, Amended Complaint, and proposed Supplemental Complaint into a single pleading." It further ordered that "no further amendments to the Plaintiff's pleadings will be permitted absent substantial justification."

Between the October 14, 2014 hearing and the consent Order's entry, the Plaintiff filed a Motion for a Ruling to Show Cause, in which he alleged that SCDMH retaliated against his filing of this lawsuit by suspending his computer privileges and confiscating several floppy disks used to store his files. Subsequently, on December 29, 2014, one week after the deadline for filing his Second Amended Complaint had passed, the Plaintiff filed a Motion to Stay, in which he requested that the court stay the time for him to file his Second Amended Complaint until his Motion for a Ruling to Show Cause is decided. That motion came before The Honorable DeAndrea G. Benjamin on May 4, 2015, at which time Judge Benjamin denied the motion and entered an Order giving the Plaintiff until May 29, 2015 to file his Second Amended Complaint. The Plaintiff subsequently filed his Second Amended Complaint on May 27, 2015. However, it

did not comply with Rule 10(b), SCRCP. Accordingly, on October 15, 2015, Judge Benjamin ordered the Plaintiff to re-file his Second Amended Complaint in a form that complies with all requirements of the South Carolina Rules of Civil Procedure. Thereafter, the Plaintiff filed and served a pleading dated November 5, 2015 and captioned as his "Complaint," though it is in fact the fourth version of his pleading (referred to hereinafter as the "Third Amended Complaint").

In the Third Amended Complaint, the Plaintiff seeks: (1) a judicial declaration regarding the terms "care" and "treatment" as they are used in S.C. Code Ann. § 44-48-170 (which requires SCDMH to conform to constitutional standards with respect to SVPTP residents); (2) a judicial declaration that SCDMH is wrongfully restricting his ability to practice his Islamic faith; and (3) injunctive relief in the form of a directive to SCDMH ordering it to adhere to statutory and constitutional law. SCDMH served its Answer to the Third Amended Complaint on November 19, 2015, denying all material allegations of the Third Amended Complaint. The parties have exchanged written discovery and SCDMH has taken the Plaintiff's deposition. As set forth herein, the pleadings and evidence revealed in discovery indicate that SCDMH is entitled to judgment as a matter of law.

STANDARD OF REVIEW

Summary judgment shall 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 as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; Singleton v. Sherer, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings" but "must present specific facts showing a genuine issue for trial." Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 558-59, 671 S.E.2d

79, 85 (Ct. App. 2008) (citations and quotations omitted). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Accordingly, "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct. App. 2005). See also CEL Products, LLC v. Rozelle, 357 S.C. 125, 129, 591 S.E.2d 643, 645 (Ct. App. 2004) (noting that Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial") (citations and quotations omitted).

DISCUSSION

The Plaintiff, like other residents of the SVPTP who have asserted similar claims, has failed to state or establish a claim that rises to the level of a constitutional deprivation (or any other claim). See generally, e.g., Hamm v. Scaturo, 9:15-cv-02734-RMG-BM, 2016 WL 4084042 (D.S.C. Apr. 13, 2016), report and recommendation adopted, 9:15-cv-02734-RMG, 2016 WL 4071957 (D.S.C. July 28, 2016) (medical care and conditions of confinement); Miller v. Scaturo, 8:15-cv-02531-PMD-JDA, 2016 WL 703717 (D.S.C. Jan. 28, 2016), report and recommendation adopted, 8:15-cv-02531-PMD, 2016 WL 695706 (D.S.C. Feb. 22, 2016) (double bunking and lockdowns); Guess v. McGill, 9:13-cv-00260-TLW, 2014 WL 5106735 (D.S.C. Oct. 10, 2014) (infringement on practice of Islam); Valbert v. S.C. Dep't of Mental Health, 9:12-cv-01973-RBH, 2013 WL 4500455 (D.S.C. Aug. 20, 2013) (double bunking and medical care); Treece v. McGill, 3:08-cv-03909-DCN, 2010 WL 3781695 (D.S.C. Sept. 21, 2010) (food, medical care, and mental health treatment); Hughes v. Scaturo, 3:08-cv-00429-CMC, 2009 WL 497506 (D.S.C. Feb. 26, 2009) (dental care); Lasure v. Doby, 0:06-cv-01527-

RBH, 2007 WL 1377694 (D.S.C. May 8, 2007) (living conditions); McClam v. Chavez, 3:05-cv-01795-TLW, 2006 WL 1663797 (D.S.C. Jun. 8, 2006) (medical care); and Williams v. Gintoli, 9:03-cv-01102-MBS, 2004 WL 1474658 (D.S.C. Mar. 9, 2004) (mental health treatment) (all granting summary judgment on constitutional claims brought by residents of the SVPTP). Accordingly, SCDMH is entitled to judgment as a matter of law and dismissal of this matter with prejudice.

I. THE PLAINTIFF CANNOT ESTABLISH A CONSTITUTIONAL VIOLATION BY SCDMH PERTAINING TO HIS CARE.

The Plaintiff is an involuntary civil committee of the SVPTP and, as such, retains "a liberty interest in conditions of reasonable care and safety and in reasonably nonrestrictive confinement conditions." McClam, 2006 WL 1663797, at *2 (citing Youngberg v. Romeo, 457 U.S. 307, 324 (1982)). Whether a civil committee's constitutional rights have been violated "must be determined by balancing his liberty interests against the relevant state interests." Youngberg, 457 U.S. at 321. Government officials are permitted to determine the conditions of confinement within the bounds of professional discretion. Id. at 321-22. Decisions made by professionals are "presumptively valid." Id. at 323. "[L]iability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." Id. See also Patten v. Nichols, 274 F.3d 829, 842 (4th Cir. 2001) (holding that a denial of care claim asserted by an involuntarily committed mental patient must be measured under the Youngberg "professional judgment" standard).

The status of a civil committee, such as the Plaintiff, most closely resembles that of a pretrial detainee. Treece, 2010 WL 3781695, at *4; Lasure, 2007 WL 1377694, at *5. Accordingly, the Plaintiff's "constitutional claims are governed under the Due Process Clause of

the Fourteenth Amendment." Treece, 2010 WL 3781695, at *4 (citing Bell v. Wolfish, 441 U.S. 520, 535 n. 16 (1979)). The inquiry concerns whether the conditions of which he complains amount to punishment. Bell, 441 U.S. at 535. "[N]ot every hardship . . . amounts to 'punishment' in the constitutional sense." Hill v. Nicodemus, 979 F.2d 987, 991 (4th Cir. 1992). "[T]he fact that such detention interferes with the detainee's understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into 'punishment.'" Bell, 441 U.S. at 537. "In order to establish that a particular condition or restriction of detention constitutes constitutionally impermissible 'punishment' a detainee must show either 1) an expressed intent to punish or 2) a lack of a reasonable relationship to a legitimate nonpunitive governmental objective, from which a punitive intent may be inferred." Hill, 979 F.2d at 991 (citations and quotations omitted). "[M]aintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." Bell, 441 U.S. at 546. "Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Id. at 547.

In light of the "professional judgment" standard established in Youngberg and the considerable deference due the officials who oversee the SVPTP, the Plaintiff cannot establish a constitutional violation pertaining to his care. There is no evidence in the record that the administrators of the SVPTP have acted capriciously or without professional judgment. There is no evidence of an expressed intent to punish the Plaintiff or a lack of a reasonable relationship to a legitimate nonpunitive objective such as order, discipline, or security. To the contrary, the

record reflects that the administrators who run the SVPTP have at all times exercised their professional judgment and discretion in weighing competing considerations in light of appropriate professional standards, as well as security and safety concerns, when making any decisions regarding the Plaintiff. Affidavit of Holly Scaturo ¶ 17; Affidavit of Kimberly Poholchuk ¶ 10. Accordingly, the Plaintiff cannot establish an "expressed intent to punish" or "a lack of a reasonable relationship to a legitimate nonpunitive governmental objective, from which a punitive intent may be inferred." Hill, 979 F.2d at 991 (citations and quotations omitted).

In the Third Amended Complaint, the Plaintiff's primary allegations relating to his care are that: (1) the amount and quality of the food he is provided is inadequate; and (2) he is involuntarily double bunked with another SVPTP resident. However, neither issue rises to the level of a constitutional violation.

All meals provided to residents of the SVPTP are provided by BRCI. Poholchuk Aff. ¶ 6. Residents are served the same food that is served to BRCI inmates. Id. BRCI nutritional service staff makes all efforts to ensure that food is served at the proper temperatures and free from contamination. Id. There is no evidence in the record that anyone employed by the SVPTP has tampered with the food provided to the Plaintiff. Id. The South Carolina Supreme Court has held that the Interagency Agreement, which specifically provides for the provision of meals to the SVPTP by SCDC, is constitutional. See Luckabaugh, 351 S.C. at 136-37, 568 S.E.2d at 345. The record simply does not contain any evidence that the food provided to the Plaintiff gives rise to a constitutional claim of "punishment." See, e.g., Treece, 2010 WL 3781695, at *5 (finding that the plaintiff's allegations, including inadequate food, did not "demonstrate any deprivation of a constitutional magnitude").

That the Plaintiff is double bunked also fails to give rise to a constitutional claim. Williams v. Griffin, 952 F.2d 820, 824 (4th Cir. 1991) ("It is clear that double or triple celling of inmates is not *per se* unconstitutional.") (citing Rhodes v. Chapman, 452 U.S. 337, 348 (1981)). Double bunking is only constitutionally suspect if it leads to deprivation of basic human needs such as food, medical care, or sanitation, or if it increases violence among inmates or creates other intolerable conditions. Rhodes, 452 U.S. at 348. The record reflects that the SVPTP is not overcrowded in the constitutional sense because residents are still provided with security, shelter, food, medical treatment, and other necessary services despite the fact that the current population requires that some residents be double bunked. Scaturo Aff. ¶ 13. While the ideal situation would be for all residents to have single occupancy rooms, the SVPTP has no control over the number of residents referred for treatment and, therefore, double bunking is sometimes necessary. Scaturo Aff. ¶¶ 12, 14. Decisions about double bunking are made by staff with the best medical, treatment, and safety interests of residents in mind through the exercise of professional judgment. Scaturo Aff. ¶ 12. Furthermore, residents may appeal double bunking concerns through the standard grievance process. Id. In this case, the Plaintiff has not alleged and cannot establish any type of physical or mental injury as a result of being double bunked and, therefore, he has not proven a constitutional violation. Miller, 2016 WL 703717, at *4 ("Plaintiff has failed to establish that his being double bunked violated any SVPTP policy, a court order, or his constitutional rights."). See also Treece v. S.C. Dep't of Mental Health, 3:08-cv-03909-DCN, 2010 WL 3781726, at *9 (D.S.C. Feb. 19, 2010) ("Plaintiff fails to show that his constitutional rights were violated because of any double-bunking."), report and recommendation adopted sub nom. Treece v. McGill, 3:08-cv-03909-DCN, 2010 WL 3781695 (D.S.C. Sept. 21, 2010).

Because the Plaintiff cannot establish that the alleged deficiencies in his care rise to the level of a constitutional violation, SCDMH is entitled to judgment as a matter of law on his claim alleging substandard care under the Act.

II. THE PLAINTIFF CANNOT ESTABLISH A CONSTITUTIONAL VIOLATION BY SCDMH PERTAINING TO HIS TREATMENT.

The Plaintiff likewise cannot establish a constitutional violation pertaining to his treatment. He and all the other residents of the SVPTP receive cognitive behavior therapy. Scaturo Aff. ¶ 8. The program is group-based with an open-ended format. Id. It is designed to address a broad array of issues to assist him in learning skills both to avoid offending and lead a meaningful life once released. Id. Some of the skills addressed include building self-esteem, reducing risk factors for offending, and learning self-management of mood and impulses. Id. The goal is that the Plaintiff will be discharged to lead a productive and meaningful life within his community after having been determined to be safe to be at large and not likely to reoffend. Id. At all times, the Plaintiff has been provided with appropriate treatment. Scaturo Aff. ¶ 11. Furthermore, all decisions regarding the Plaintiff have been made through the exercise of professional judgment. Scaturo Aff. ¶ 17. The Plaintiff cannot show any acts or omissions on the part of SCDMH that were "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that [SCDMH] actually did not base the decision on such a judgment." Youngberg, 457 U.S. at 323. Accordingly, SCDMH's decisions with respect to the Plaintiff's treatment are entitled to considerable deference. Moreover, the Plaintiff cannot establish an "expressed intent to punish" or "a lack of a reasonable relationship to a legitimate nonpunitive governmental objective, from which a punitive intent may be inferred." Hill, 979 F.2d at 991 (citations and quotations omitted). Accordingly, SCDMH is entitled to judgment as a matter of law on the Plaintiff's claim alleging substandard treatment under the Act. See, e.g.,

Treece, 2010 WL 3781695, at *5 (finding that the plaintiff's allegations, including inadequate sex offender treatment, did not "demonstrate any deprivation of a constitutional magnitude").

III. THE PLAINTIFF CANNOT ESTABLISH A CONSTITUTIONAL OR STATUTORY VIOLATION BY SCDMH PERTAINING TO HIS PRACTICE OF RELIGION.

The Plaintiff claims SCDMH has burdened his ability to practice his Muslim faith. He makes two primary complaints: (1) he is allegedly not given sufficient food during the annual Ramadan fast; and (2) he is allegedly not permitted to participate in the Friday congregational prayer called Jumu'ah. However, the record reflects that the Plaintiff is accommodated and allowed to practice his faith in many ways. He is able to do the five daily prayers (salat) and to possess a Qu'ran and other religious books along with a prayer rug and a kufi. Supp. Affidavit of Holly Scaturo ¶ 10. He is also allowed to purchase religious materials directly from the publisher with the approval of BRCI Chaplaincy Services. Id. And he is permitted to participate in the Ramadan fast. Id.

Regarding the food provided to the Plaintiff during the Ramadan fast, pursuant to the Interagency Agreement (which has been approved as constitutional by the South Carolina Supreme Court), SCDC provides all meals to residents of the SVPTP. SCDMH has no control over the food provided to residents by BRCI's food service, whether during Ramadan or any other time of the year. SCDMH and SCDC are aware that the Plaintiff is a Muslim and BRCI's food service has approved him for a pork-free diet as it does for all Muslim inmates. Id.

As for Jumu'ah services, the record reflects that they are not held because there has been no volunteer leader from the resident community to lead such services. Supp. Scaturo Aff. ¶ 11. Should a volunteer leader come forward and receive approval, the Plaintiff and all other Muslim residents will be permitted to schedule Jumu'ah and other group worship services. Id.

There is no evidence in the record indicating that SCDMH has impermissibly or unreasonably infringed upon the Plaintiff's free exercise of religion,[1] and thus SCDMH is entitled to judgment as a matter of law on his religious infringement claim. See generally, e.g., Guess v. McGill, 9:13-cv-02260-TLW, 2014 WL 5106735 (D.S.C. Oct. 10, 2014) (granting summary judgment to SCDMH employees accused of infringing upon a Muslim SVPTP resident's free exercise of religion), aff'd, 589 F. App'x 227 (4th Cir. 2015).

IV. THE PLAINTIFF CANNOT ESTABLISH A BASIS FOR THE AWARD OF ANY FORM OF RELIEF, WHETHER DECLARATORY, INJUNCTIVE, OR OTHERWISE.

In the Third Amended Complaint, the Plaintiff purports to request declaratory and injunctive relief. However, such equitable relief is improper for several reasons.

First, as set forth above, the Plaintiff cannot establish his constitutional claims, and thus no relief is warranted.

Second, to the extent the Plaintiff is seeking declaratory relief, he is essentially asking the court to issue an advisory opinion. However, "[i]t is elementary that the courts of this State have no jurisdiction to issue advisory opinions." Booth v. Grissom, 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975). See also Sangamo Weston, Inc. v. Nat'l Sur. Corp., 307 S.C. 143, 148, 414 S.E.2d 127, 130 (1992) ("This court will not issue advisory opinions[.]"). Cf. In re McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) ("[I]t is this Court's firm policy to decline to rule on constitutional issues unless such a ruling is required."); Chiste v. Hotels.com L.P., 756 F. Supp. 2d 382, 407 (S.D.N.Y. 2010) ("There is no basis for declaratory relief where only past acts are involved.") (citations and quotations omitted). Moreover, the issuance of a requested declaratory judgment is not mandatory pursuant to S.C. Code Ann. § 15-53-70; rather, "the granting of a

[1] To the extent the Plaintiff alleges SCDMH has violated the South Carolina Religious Freedom Act, S.C. Code Ann. §§ 1-32-10 et seq., there is no evidence in the record indicating that SCDMH has "substantially burden[ed]" his exercise of religion.

declaratory judgment rests in the sound discretion of the court[.]" Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co., 249 S.C. 561, 567, 155 S.E.2d 618, 621 (1967).

Third, to the extent the Plaintiff is seeking injunctive relief, he is seeking a "drastic" remedy that "ought to be applied with caution." Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Injunctions are used "to prevent irreparable harm to a party." Hampton v. Haley, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). However, the Plaintiff cannot establish that he will suffer "irreparable harm" if an injunction is not entered.

V. THE COURT DECLINES TO ISSUE A DECLARATORY JUDGMENT OR AWARD ANY RELIEF REQUESTED BY THE PLAINTIFF PURSUANT TO THE SEPARATION OF POWERS DOCTRINE.

Article I, Section 8 of the South Carolina Constitution provides: "In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." Accordingly, "[i]n our constitutional system of government with its separation of powers, courts exercise the limited constitutional function of the judicial power." Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014) (citations and quotations omitted). "[C]ourts will not interfere with such discretionary powers of a subordinate governmental agency except in cases of fraud or clear abuse of power or where unreasonable or capricious." S.C. Elec. & Gas Co. v. S.C. Pub. Serv. Auth., 215 S.C. 193, 212, 54 S.E.2d 777, 785 (1949). Moreover, courts generally "are not to immerse themselves in the management of state prisons or substitute their judgment for that of the trained penological authorities charged with the administration of such facilities." Taylor v. Freeman, 34 F.3d 266, 268 (4th Cir. 1994). See also Rhodes, 452 U.S. at 349 ("[C]onsiderations [of appropriate prison management]

properly are weighed by the legislature and prison administration rather than a court."); Bell, 441 U.S. at 562 (disapproving of the trend of courts becoming "increasingly enmeshed in the minutiae of prison operations" and finding that "[t]he wide range of 'judgment calls' that meet constitutional and statutory requirements are confided to officials outside of the Judicial Branch of Government"). Accordingly, because the staff of the SVPTP has exercised and continues to exercise its sound professional judgment in the operation of the program within the bounds of constitutional requirements, this court will abstain from questioning that judgment.

IT IS, THEREFORE, ORDERED that, for the reasons set forth herein, the court finds no genuine issue as to any material fact that will entitle the Plaintiff to a judgment against the Defendant.

IT IS FURTHER ORDERED that the Defendant's Motion for Summary Judgment is **GRANTED.**

IT IS FURTHER ORDERED that the Defendant is granted summary judgment as to all causes of action asserted against it in the Third Amended Complaint.

IT IS FURTHER ORDERED that this action is dismissed **WITH PREJUDICE.**

AND IT IS SO ORDERED.

G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

October 27, 2016

Columbia, South Carolina