

jms

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>DAYLE WILEY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 03-4133</b>
	)	
<b>GLENN “RICK” TRAPP, in his individual capacity as the Sheriff of Douglas County; and DOUGLAS COUNTY, a political subdivision of the State of Kansas,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

---

**MEMORANDUM ORDER AND OPINION  
GRANTING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT AND  
DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on defendants’ Glenn “Rick” Trapp and Douglas County’s Motion for Summary Judgment (Doc. 17) and plaintiff Dayle Wiley’s Motion for Summary Judgment (Doc. 29). Both plaintiff and defendants seek summary judgment on plaintiff’s Fourteenth Amendment equal protection claim brought pursuant to 42 U.S.C. § 1983. For the reasons stated below, defendants’ motion is granted and plaintiff’s motion is denied.

**I. Uncontroverted Facts**

On July 26, 2001, plaintiff was arrested on a warrant for violating the conditions of her probation and transported to the Douglas County Jail. This jail is a 196-bed facility with four separate secure “pods.” Three pods house up to 56 minimum, medium, and maximum security male inmates,

while a single 28-bed pod houses female inmates of all classifications, including work release inmates. Upon arrival at the jail, plaintiff was placed in pre-classification and incarcerated in a cell in the female pod.

On August, 1, 2001, plaintiff was classified as a medium security inmate and placed in a medium security cell in the female pod. As a medium security inmate, plaintiff could eat meals and socialize with other female medium security inmates. She was allowed to be outside of her cell fewer than four hours per day, and had the opportunity to get fresh air within the jail premises.

On August 22, 2001, plaintiff was granted a Work (School) Release Order<sup>1</sup> enabling her to attend classes Monday through Friday at the University of Kansas. Pursuant to an order, she was also reclassified as a work release inmate. In conjunction with her reclassification, plaintiff was transferred to a cell on the upper floor of the female pod. This cell had a steel door, stainless steel sink and toilet combination, and had a slot through which food could be passed. During the week, plaintiff was confined to her cell when she was not attending classes. On the weekends, plaintiff was confined to her cell for up to 23 hours per day. On both weekdays and weekends, plaintiff was allowed to exit her cell to retrieve and eat her meals if there were no other female inmates outside of their cells in plaintiff's section. As a work release inmate, plaintiff was prohibited from participating in jail programs such as religious services and Alcoholics Anonymous and was prohibited from having visitors.

Male work release inmates are housed in a 56-bed dormitory style pod sharing rooms and bathrooms, while the female school work release inmates, such as plaintiff, have individual cells with a

---

<sup>1</sup>Both work release and school release inmates were classified as work release inmates.

private lavatory, a desk and a door. No work release inmate, male or female is allowed visitation or participation in jail programs. Similarly, no work release inmate is allowed to socialize, eat meals with or watch television with inmates of other classifications. Work release inmates, including plaintiff, are allowed to have contact with each other.

Plaintiff testified in her deposition that she understood the terms of her school release order, including that she would have to give up all of her privileges including access to Alcoholics Anonymous meetings, religious services and visitors and that she would be in “lock down” for up to 23 hours per day. With knowledge of the terms and conditions of the school release program, plaintiff chose to participate in the program.

In plaintiff’s complaint, she asserts claims under 42 U.S.C. § 1983 arising out of her incarceration in the Douglas County Jail. Specifically, plaintiff claims that: 1) she was denied equal protection in violation of the Fourteenth Amendment; 2) her incarceration constituted cruel and unusual punishment in violation of the Eighth Amendment; and 3) she was denied her rights to due process in violation of the Fourteenth Amendment. In her response to defendants’ summary judgment motion, however, plaintiff “agrees to dismiss her claimed violations of her 8th and 14th Amendment rights of protection from cruel and unusual punishment and due process.” Subsequently, all claims against defendant Trapp were dismissed with prejudice by stipulation of all parties.<sup>2</sup> Thus, the only claim before the Court is plaintiff’s Fourteenth Amendment equal protection claim against Douglas County, a claim upon which both parties seek summary judgment.

---

<sup>2</sup>Doc. 35

## II. Summary Judgment Standard

Summary judgment is appropriate “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 judgment as a matter of law.”<sup>3</sup> The requirement of a “genuine” issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party.<sup>4</sup> Essentially, the inquiry 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.”<sup>5</sup>

The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. This burden may be met by showing that there is a lack of evidence to support the nonmoving party’s case.<sup>6</sup> Once the moving party has properly supported its motion for summary judgment, the burden shifts to the nonmoving party to show that there is a genuine issue of material fact left for trial.<sup>7</sup> “A party opposing a properly supported motion for summary judgment may not rest on mere allegations or denials of [its] pleading, but must set forth specific facts showing that there is a genuine issue for trial.”<sup>8</sup> Therefore, the mere existence of some alleged factual dispute between the

---

<sup>3</sup>Fed. R. Civ. P. 56(c).

<sup>4</sup>See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

<sup>5</sup>*Id.* at 251-52.

<sup>6</sup>See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

<sup>7</sup>See *Anderson*, 477 U.S. at 256.

<sup>8</sup>*Id.*

parties will not defeat an otherwise properly supported motion for summary judgment.<sup>9</sup> The Court must consider the record in the light most favorable to the nonmoving party.<sup>10</sup>

The Court notes that summary judgment is not a “disfavored procedural shortcut”; rather, it is an important procedure “designed to secure the just, speedy and inexpensive determination of every action.”<sup>11</sup>

### **III. Discussion**

#### **A. Constitutional Violation**

Defendants assert that plaintiff has not established a violation of her equal protection rights. Conversely, plaintiff claims that she has proven an equal protection violation. The Fourteenth Amendment requires that states treat similarly situated people alike.<sup>12</sup> Dissimilar treatment of persons cannot violate equal protection unless those persons are similarly situated.<sup>13</sup> Thus, in an equal protection claim, the Court must determine, as a threshold matter, whether plaintiff has shown that she was treated differently from those who were similarly situated to her.<sup>14</sup> In considering if male and female prisoners are similarly situated, courts consider: 1) the population size of the prison; 2) the

---

<sup>9</sup>*See id.*

<sup>10</sup>*See Bee v. Greaves*, 744 F.2d 1387, 1396 (10th Cir. 1984), *cert. denied* 469 U.S. 1214 (1985).

<sup>11</sup>*Celotex*, 477 U.S. at 327 (quoting Fed. R. Civ. P. 1).

<sup>12</sup>*Barney v. Pulsipher*, 143 F.3d 1299, 1312 (10th Cir. 1998) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)).

<sup>13</sup>*Klinger v. Dep’t of Corr.*, 31 F.3d 727, 731 (8th Cir. 1994).

<sup>14</sup>*See Barney*, 143 F.3d at 1312.

security level; 3) the types of crimes; 4) the length of the sentence; and 5) special characteristics.<sup>15</sup>

### **1. Was plaintiff similarly situated to the male work release inmates?**

The parties agree that the security level of male and female work release inmates is substantially similar, that the types of crimes leading to incarceration as a male or female work release inmate are similar; and that the length of sentences of male and female work release inmates is similar. Defendants argue, however, that the dramatic difference in the population of male and female work release inmates, along with the frequently changing population of prisoners at a county jail renders plaintiff not similarly situated to the male work release inmates. While there is no doubt that the jail was designed to accommodate more men than women, this does not ruin plaintiff's contention that she and the male work release inmates are similarly situated. Nor does it follow that because the jail's current assignment of women to one pod is an efficient allocation of resources in light of the ever-changing inmate population, plaintiff has failed to carry her burden. Plaintiff has shown that she and the male work release inmates were incarcerated in the same prison, had the same security level, committed the same types of crimes and were serving similar sentences. Thus, plaintiff has demonstrated that she was similarly situated to the male work release inmates.

### **2. Was plaintiff treated differently from the male work release inmates?**

Even though plaintiff has shown she was similarly situated to her male counterparts, she must also show that she was treated differently. There appear to be more similarities in the treatment of female and male work release inmates than differences. No work release inmate, male or female is

---

<sup>15</sup>*Pargo v. Elliot*, 894 F. Supp 1243, 1254-62 (S. D. Iowa 1995); *Women Prisoners of the District of Columbia Dep't of Corr. v. District of Columbia*, 93 F.3d 910, 925 (D. C. Cir. 1996); *Marsh v. Newton*; Civ. No. 97-2157, 1998 WL 39235 at \* 2 (10th Cir. 1998) (unpublished opinion).

allowed visitation or participation in jail programs. Similarly, no work release inmate is allowed to socialize, eat meals with or watch television with inmates of other classifications. Work release inmates, including plaintiff, are allowed to have contact only with other work release inmates. During plaintiff's time as a work release inmate, only one other female work release inmate was at the prison for a period of five days. During those five days, plaintiff was allowed to talk with the other work release inmate and allowed to eat meals with her.

The only difference in treatment was plaintiff's housing; plaintiff was housed in a single cell, whereas male work release inmates were housed in a dormitory style pod. As an inmate in a single cell, plaintiff was subject to "locking back" behind a heavy metal door on the upper level of the female pod. Male inmates are locked only behind a wooden door. Even this claimed dissimilarity in treatment is suspect though, because when the jail only has one male work release inmate, the male dormitory is closed and the inmate is housed in a cell in the booking area to save judicial resources. Similarly, plaintiff's claims that she was isolated, while male inmates were allowed to socialize with others, is not based upon the disparate treatment in housing, but on the small number of female work release inmates at the jail during plaintiff's incarceration. Even if plaintiff had been housed in a separate dormitory, she would not have been permitted to socialize with other female inmates, unless other female work release inmates were at the jail. Plaintiff's evidence of dissimilar treatment is thin, but construing all factual allegations in her favor, the Court concludes that plaintiff has proffered sufficient evidence to avoid summary judgment on this issue.

### **3. Was the dissimilar treatment reasonably related to a legitimate penological interest?**

In a long line of cases, the Supreme Court has recognized that prisoners retain constitutional

rights when incarcerated. The Court has reiterated that ““convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison.””<sup>16</sup> In some instances, however, constitutional rights must be curtailed due to the very fact of incarceration or for valid penological reasons.<sup>17</sup> Consequently, what might be viewed as an unreasonable infringement of a fundamental constitutional right were it to occur outside of prison may be valid in prison as long as the infringement is reasonably related to legitimate penological objectives, which include rehabilitation, deterrence and security.<sup>18</sup> Given a prison’s need to constrain antisocial and potentially violent conduct, the latter objective frequently is determinative of accommodation issues.<sup>19</sup> Thus, “when a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.”<sup>20</sup>

Plaintiff argues that equal protection challenges are not subject to the “reasonably related to legitimate penological interests” test announced by the Supreme Court in *Turner v. Safley*. Instead, plaintiff suggests that *United States v. Virginia*<sup>21</sup> is controlling, and that a heightened standard of scrutiny applies to equal protection claims. Plaintiff argues that defendants must show that “the

---

<sup>16</sup>*O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348, 107 S. Ct. 2400 (1987).

<sup>17</sup>*Berheide v. Suthers*, 286 F.3d 1179, 1184 (10th Cir. 2002) (citing *O’Lone*, 482 U.S. at 348); *Overton v. Bazzeta*, 539 U.S. 126, 131, 123 S. Ct. 2162 (2003) (“Many of the liberties and privileges enjoyed by other citizens must be surrendered by the prisoner. An inmate does not retain rights inconsistent with incarceration.”).

<sup>18</sup>*O’Lone*, 482 U.S. at 348-49.

<sup>19</sup>See *Washington v. Harper*, 494 U.S. 210, 225 (1990).

<sup>20</sup>*Turner v. Safley*, 482 U.S. 78, 87, 107 S. Ct. 2254 (1987); *Shaw v. Murphy*, 532 U.S. 223, 229, 121 S. Ct. 1475 (2001).

<sup>21</sup>518 U.S. 515, 116 S. Ct. 2264 (1996).

classification serves important government objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.”<sup>22</sup> Importantly, *United States v. Virginia*, involved not an equal protection challenge by a prisoner, but rather, a challenge by the government to Virginia Military Institution’s (VMI) policy of excluding females from enrollment. While a heightened level of scrutiny may have applied to the policies of VMI, when equal protection challenges arise in a prison context, courts must adjust the level of scrutiny to ensure that prison officials are afforded the necessary discretion to operate their facilities in a safe and secure manner.<sup>23</sup> In a prison context, therefore, the Court must determine whether the disparate treatment is “reasonably related to [any] legitimate penological interests.”<sup>24</sup> This deferential standard applies “even when the alleged infringed constitutional right would otherwise warrant higher scrutiny.”<sup>25</sup>

As the Supreme Court stated in *Turner v. Safley*, “courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform.”<sup>26</sup> Running a prison is an inordinately difficult undertaking that requires expertise, planning and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and

---

<sup>22</sup>*Id.* at 523.

<sup>23</sup>*Veney v. Wyche*, 293 F.3d 726, 732 (4th Cir. 2002).

<sup>24</sup>*Shaw*, 532 U.S. at 225.

<sup>25</sup>*Veney*, 293 F.3d at 732; see also *Freeman v. Texas Dep’t of Corr.*, 369 F.3d 854, 863 (5th Cir. 2004) (noting that *Turney v. Safley* “applies with corresponding force to equal protecting claims”); *Walker v. Gomez*, 370 F.3d 969, (9th Cir. 2003) (“ In the prison context, however, even fundamental rights such as the right to equal protection are judged by a standard of reasonableness—specifically, whether the actions of prison officials are “reasonably related to legitimate penological interests.”)

<sup>26</sup>482 U.S. at 84, 107 S. Ct. 2254.

separation of powers concerns counsel a policy of judicial restraint. Thus, where a state penal system is involved, federal courts have additional reason to accord deference to the appropriate prison authorities.<sup>27</sup>

In determining whether a prison regulation is reasonably related to legitimate penological interests, and thus, permissible, four factors are relevant.<sup>28</sup> First, “there must be a valid, rational connection between the prison regulation and the legitimate and neutral government interest put forward to justify it.”<sup>29</sup> If the connection between the regulation and the asserted goal is arbitrary or irrational, then the regulation fails, irrespective of whether the other factors tilt in its favor.<sup>30</sup> In addition, courts should consider three other factors: the existence of alternative means of exercising the right available to inmates; the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally; and the absence of ready alternatives available to the prison for achieving the governmental objectives.<sup>31</sup> “The burden is not on the State to prove the validity of the prison regulations, but on the prisoner to disprove it.”<sup>32</sup>

The dissimilar treatment of male and female work release inmates, such as plaintiff, is reasonably related to legitimate penological objectives. Defendant’s policy of housing all female

---

<sup>27</sup>*Id.* at 89, 107 S. Ct. 2254.

<sup>28</sup>*Shaw*, 532 U.S. at 229.

<sup>29</sup>*Id.* (quoting *Turner*, 482 U.S. at 89).

<sup>30</sup>*Id.* at 229-30 (quoting *Turner*, 483 U.S. at 89-90).

<sup>31</sup>*Id.* at 230 (quoting *Turner*, 482 U.S. at 90).

<sup>32</sup>*Overton v. Bazzetta*, 539 U.S. 126, 132, 123 S. Ct. 2162 (2003).

inmates in one pod requires female work release inmates to be confined to their cells for longer periods of time than their male counterparts. The purpose of this policy is to keep inmates separate; by confining female work release inmates to their cells for longer periods of time, other classifications of inmates are allowed access to programs without coming into contact with the work release inmates. Because they are allowed to leave the prison, sometimes on a daily basis, work release inmates have the opportunity to pass messages to people outside of the jail, or to bring contraband or weapons into the jail. Similarly, other inmates who know that work release inmates are leaving the prison could attempt to force the work release inmates to contact individuals outside the prison or bring items back into the jail. This compromises the safety of the inmates inside the jail, the guards, and the work release inmates. Minimizing the contact between inmates of different classifications is thus reasonably related to insuring the security of all inside the jail. It is well-settled that jail security is a legitimate penological interest.<sup>33</sup> Indeed, the Supreme Court recently noted that internal jail security is “perhaps the most legitimate of penological goals.”<sup>34</sup>

The other three factors similarly weigh in favor of defendant. Despite plaintiff being confined to her cell for longer periods of time than male work release inmates, she was allowed to leave her cell for 8 hours a day to attend classes at the University of Kansas, and certainly had other avenues to exercise her right to socialize with other individuals. Moreover, accommodating plaintiff’s right would have a negative effect on other inmates and guards because allowing plaintiff to interact with other inmates would implicate the jails’ security and the safety of those inside. Finally, there is no ready alternative to

---

<sup>33</sup>*Pell v. Procunier*, 417 U.S. 817, 823, 94 S. Ct. 2800 (1974).

<sup>34</sup>*Overton*, 539 U.S. at 133.

satisfy plaintiff's concerns short of building a new housing area for female work release inmates, which would be a waste of defendant's resources.

Because defendant's policy of housing male and female work release inmates differently is logically related to a legitimate penological interest, defendant has not violated plaintiff's Fourteenth Amendment right to equal protection. The deprivation of a constitutional right is a necessary prerequisite to a § 1983 claim.<sup>35</sup> Consequently, summary judgment must be granted on plaintiff's due process claim brought pursuant to 42 U.S.C. § 1983.<sup>36</sup>

**IT IS THEREFORE ORDERED BY THE COURT** that Defendants' Motion for Summary Judgment (Doc. 17) is GRANTED.

**IT IS FURTHER ORDERED BY THE COURT** that Plaintiff's Motion for Summary Judgment (Doc. 29) is DENIED.

**IT IS SO ORDERED.**

Dated this 16<sup>th</sup> day of August 2004.

S/ Julie A. Robinson  
Julie A. Robinson  
United States District Judge

---

<sup>35</sup>See 28 U.S.C. § 1983; *Gonzales v. City of Castle Rock*, 366 F.3d 1093 (10th Cir. 2004) ("To succeed in her § 1983 claim [plaintiff] must show that she was deprived of a constitutional right by a person acting under color of state law.").

<sup>36</sup>As plaintiff has abandoned her due process and Eighth Amendment claims against defendant Douglas County, and dismissed defendant Trapp from this action, the Court need not address defendants' arguments related to these claims and this defendant.