COURT OF APPEALS
DECISION
DATED AND RELEASED

July 17, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0409

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

REGINALD TERRY,

PLAINTIFF-APPELLANT,

v.

GARY MCCAUGHTRY, CAPTAIN MURASKI, AND CO II RUSSELL,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dodge County: JOSEPH E. SCHULTZ, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Inmate Reginald Terry sued several employees at the Waupun Correctional Institution under 42 U.S.C. § 1983, alleging that a corrections officer injured his arm while closing his outer cell door, causing him pain and suffering and violating his constitutional rights. The trial court granted

the defendants' motion for summary judgment dismissing his action, and Terry appeals.

The material facts are not in dispute. Responding to noise from Terry's cell in the prison's adjustment center, prison officials warned Terry twice that if he did not stop his disruptive behavior, the outer wooden door to his cell would be closed.[1] Terry continued the behavior, and corrections officer Richard Russell closed and latched his door.[2] Later that morning, Terry requested medical attention, complaining that Russell closed the door on his arm. The examining nurse observed a small scrape on the back of Terry's arm and that he moved his arm with difficulty, but concluded that his injury was minor.

In granting summary judgment dismissing the action, the trial court concluded as a matter of law that Russell did not act with a sufficiently culpable state of mind, and that Terry's injury was not sufficiently serious to establish an Eighth Amendment violation. The court also concluded that none of the other named defendants either caused or participated in the incident. Finally, the court ruled that Terry's Fourteenth Amendment due process claim must also fail because he had not established that he had a liberty interest in having his door kept open.[3] We affirm.

---

[1] The record indicates that it is standard adjustment center policy to close the outer wooden door on the cell of a disruptive inmate, not as a form of discipline but to encourage the inmate to regain self-control.

[2] As a result of the incident, Terry was charged with several offenses and found guilty of disrespect, disobeying orders, and threats. *See* WIS. ADM. CODE §§ DOC 303.25, 303.24, 303.16.

[3] Terry does not challenge the trial court's dismissal of his due process claim on this appeal.

Summary judgment is appropriate in cases in which there is no genuine issue of material fact and the moving party has established entitlement to judgment as a matter of law. ***Germanotta v. National Indem. Co.***, 119 Wis.2d 293, 296, 349 N.W.2d 733, 735 (Ct. App. 1984). We review summary judgment orders *de novo*, applying the same methodology as the trial court. ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). Where, as here, there is no dispute as to the material facts, we consider the legal issues raised by the motion. ***Fritz v. McGrath***, 146 Wis.2d 681, 683, 431 N.W.2d 751, 752 (Ct. App. 1988).

We first address Terry's claim that Russell violated his Eighth Amendment right to be free from cruel and unusual punishment. The Supreme Court discussed the limits of that right in ***Whitley v. Albers***, 475 U.S. 312, 319 (1986):

> After incarceration, only the unnecessary and wanton infliction of pain … constitutes cruel and unusual punishment forbidden by the Eighth Amendment. To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety.... whether that conduct occurs in connection with establishing conditions of confinement ... or restoring official control over a tumultuous cellblock.

(Quotations and quoted sources omitted.) *See also* ***Hudson v. McMillan***, 503 U.S. 1, 9-10 (1992) (Eighth Amendment does not recognize "*de minimis* uses of physical force.").

To prevail on an Eighth Amendment claim, the plaintiff must show that the deprivation was sufficiently serious and that prison officials acted with a culpable state of mind. ***Wilson v. Seiter***, 501 U.S. 294, 298 (1991). We do not reach the "state of mind" issue in this case because we conclude, as did the trial

court, that the undisputed facts establish that Terry's injury was minimal and that he failed to show a "risk of serious harm."

As we have noted, the goal underlying the prison's policy of closing the outer door of a disruptive inmate's cell is not to punish or discipline but to encourage the inmate to regain self-control. In his affidavit opposing summary judgment, Terry acknowledged that he was told his door would be closed pursuant to this policy if he continued his disruptive behavior and that Russell instructed him to move his hands, which were outside the bars of his cell. The examining nurse's affidavit stated that Terry had a "small scrape" on his arm but that his injury was minor and could be treated with "follow-up attention on an as-needed basis." Several days later when Terry was seen on an unrelated complaint, he did not mention any arm pain. On the basis of these undisputed facts, we conclude that the trial court properly dismissed Terry's Eighth Amendment claim.

Terry also argues that the trial court erred in granting the defendants' summary judgment motion on his state-law intentional tort claim. While Terry's complaint states that Russell "deliberately slammed" the door on his hand and makes an oblique reference to § 893.57, STATS., the statute of limitations for intentional torts, the record demonstrates that the issue was neither argued to nor decided by the trial court. We decline to address it for the first time here. *See* ***Evjen v. Evjen***, 171 Wis.2d 677, 688, 492 N.W.2d 361, 365 (Ct. App. 1992).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.