UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ASHLEY DIAMOND,

Plaintiff,

v.

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back by more than a year. Accordingly, Ms. Diamond moves this Court to issue a Protective Order pursuant to its inherent equitable authority and its authority under the All Writs Act, 28 U.S.C. § 1651(a), that enjoins Defendants and their agents from retaliating against Ms. Diamond and third-parties, intimidating witnesses, and altering records or falsifying her institutional files in ways that serve to obstruct or impede this Court's ability to fairly adjudicate this case.

FACTUAL BACKGROUND

On September 29, 2020 and October 23, 2020, after suffering a horrific series of sexual assaults in her dormitory at Coastal State Prison, Ms. Diamond, through counsel, submitted Prison Rape Elimination Act ("PREA") complaints that detailed the constitutional failures of Coastal staff with respect to Ms. Diamond's health and safety. Declaration of A. Chinyere Ezie ("Ezie Decl."), Exhibits ("Ezie Ex(s).") 11-12.[1] Collectively, the notices demanded that GDC officials and staff at Coastal take proactive steps to protect Ms. Diamond going forward if they wished to "avert litigation." Ezie Ex. 12.

Within days of receiving these notices, Defendant Benton [illegible]

Decl. ¶¶ 16-

found Ms. Diamond semi-conscious following a suicide attempt, and who remained to make sure she was stable and that she did not try to kill herself again. Diamond Decl. ¶ 71; Doe Decl. ¶¶ 12-15; Ezie Decl. ¶ 18. When an officer noticed Mr. Doe seated in Ms. Diamond's cell, she exclaimed "Yes! We got him [Ms. Diamond] now!," and they were placed in solitary confinement without explanation. Doe Decl. ¶¶ 16-17; Diamond Decl. ¶ 71.

Hours later, when Ms. Diamond and Mr. Doe finally learned about the false charges against them, they attempted to dispute them but were blocked by Coastal staff. Diamond Decl. ¶¶ 74, 76; Doe Decl. ¶¶ 18-22. Defendant Benton and officials at Coastal refused to administer a rape kit or examine Ms. Diamond and Mr. Doe to confirm whether sexual contact actually took place. Diamond Decl. ¶ 74; Doe Decl. ¶ 21-22; Ezie Ex. 35. Defendant Benton also failed to retrieve the surveillance camera footage from outside Ms. Diamond's cell, despite her lawyers' express request. Diamond Decl. ¶ 74; Ezie Decl. ¶ 21. The fifth and final disciplinary report Ms. Diamond received on October 31, 2020 cited her for asking a staff member to return Mr. Doe's legal mail and personal items after he was thrown into solitary. Diamond Decl. ¶ 75; Ezie Ex. 34.

The disciplinary reports Ms. Diamond received on October 31 were rubberstamped by GDC officials without actual due process. Diamond Decl. ¶¶ 76, 85-87; Ezie Ex. 40, Att. 1 (describing the requirements of process); Aiken Decl. ¶¶ 80-83 (same). For example, in one of the only two he "hearings" she received, she witnessed that the disposition line on one of her discipline reports had been pre-marked "guilty" *before* the hearing began. Diamond Decl. ¶ 76. Ms. Diamond was not allowed to present evidence about the impossibili2 (e)40 TdCil.oe (i)-a(e)-6 u7 0 Tub66 hd "g(nt)-2 (e

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erections. Diamond Decl. ¶¶ 50, 59-61, 66, 68

85-87. Of her fourteen disciplinary reports, Ms. Diamond has only received two hearings to date, one of which was the sham hearing on her October 31 disciplinary reports. Diamond Decl. ¶ 86. Ms. Diamond has been blocked from presenting evidence or witnesses in her defense, and has never been offered a chance to view the evidence against her. Diamond Decl. ¶ 86. Ms. Diamond has even been blocked from having staff members of her choosing serve as her advocates as prison rules allow. Diamond Decl. ¶ 86; Ezie Ex. 40, Att. 1. Ms. Diamond‘s appeals have also gone unanswered, leaving her unclear on the final disposition of her disciplinary charges for months at a time. Diamond Decl. ¶ 87.

GDC Officials at Coastal Have Altered Ms. Diamond's Institutional Records and Intimidated a Witness to Provide False Testimony to Further Deter Her Advocacy

In addition to papering Ms. Diamond with disciplinary reports, GDC officials at Coastal have also falsified records and attempted to coerce false testimony that paints Ms. Diamond as a dangerous predator. Diamond Decl. ¶¶ 93-102; Doe Decl. ¶¶ 23-29. Beginning in November 2020, Defendant Benton and his subordinate, Carl Betterson, the Deputy Warden of Care and Treatment, placed Mr. Doe in prolonged solitary confinement and attempted to coerce him into providing false statements and testimony about Ms. Diamond, in exchange for his release from solitary. Doe Decl. ¶¶ 23-29; Diamond Decl. ¶¶ 97-99.

Specifically, Deputy Warden Betterson summoned Mr. Doe to his office on three separate occasions and pressured Mr. Doe to file a PREA Report that falsely accused Ms. Diamond of rape, even though John Doe had testified unequivocally that the two of them had **never** even been intimate. Doe Decl. ¶¶ 23-29; Diamond Decl. ¶¶ 97-99. When Mr. Doe reminded Betterson that he had never engaged in any sort of sexual activity with Ms. Diamond and that to say otherwise would be to lie, Betterson refused to take "no" for an answer and pressured Mr. Doe to make the

The computer records also showed that Ms. Diamond's security classification had been updated to say that she was a member of GDC's Security Threat Group—a designation that is reserved for members of violent prison gangs, not to individuals like Ms. Diamond who are assaulted or extorted by them. Diamond Decl. ¶ 79; Ezie Ex. 38; Aiken Decl. ¶¶ 71-72, 75-77. These false statements and designations have a real and potentially deadly consequence because they can serve as a pretext to keep Ms. Diamond in her current dormitory, which is populated by sexual predators, or to transfer her to another housing situation where PREA aggressors and gang members predominate. Diamond Decl. ¶ 20, 95; Duckworth Decl. ¶ 26; Aiken Decl. ¶¶ 70, 74, 77.

GDC's Ongoing Campaign of Retaliation Has Already Been Used to Deny Ms. Diamond Certain Transfers and Push Her Tentative Release Date Back by More than a Year

In a conversation Ms. Diamond had with Defendant Benton after filing her lawsuit, Benton openly acknowledged his intention to punish Ms. Diamond for her advocacy and block her chances for early release—stating "You're trying to sue me? Well, I'm keeping you here. You're going to be here for four more years." Diamond Decl. ¶ 77. On March 8, 2021, Ms. Diamond learned that Benton successfully carried out his promise when a GDC staff member informed her that her release date had been pushed back by more than a year—from March 1, 2021 to April 2022—because Benton and other officials had taken steps to falsify her institutional records and make her "look like a monster." Diamond Decl. ¶¶ 89-91, 100-102

b16 (e)-29.46aus be)Td( )Tj-0.004 T (h)-4 (Td[(O)2 433 transfer to a Transition Center where, as a transgender woman, she would likely be safer. Ezie Decl. ¶ 22; Ezie Ex. 40.

Restrictions on Ms. Diamond Ability to Communicate With Her Lawyers Has Impeded Her Ability to Effectively Litigate Her Case

Making matters even more critical, since she first lodged her complaints of retaliation, Defendants and their agents at Coastal have severely restricted Ms. Diamond's access to legal calls—the only means of reciprocal attorney-client communication available as a result of the COVID-19 pandemic. Declaration of Maya G. Rajaratnam ("Rajaratnam Decl.") ¶¶ 3-4. Prior to her Ja

A. The Court Should Issue a Protective Order to Ms. Diamond Pursuant to its Inherent Equitable Authority

This Court should issue a protective order to Ms. Diamond pursuant to “the inherent equitable powers of the court to prevent abuses, oppression, and injustices” outside the context of discovery protective orders. *Disability Rights N.J., Inc. v. Velez*, No. 10–03950 (DRD), 2011 WL 2937355, at *3 (D.N.J. July 19, 2011); *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017) (affirming that “[f]ederal courts possess certain “inherent powers . . .to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”) (citations omitted); *Peer v. Lewis* [illegible] *of t;*

Peer v.

the plaintiffs in *Travisono* satisfied that standard because they were prisoners who feared retaliation by prison guards. *Id*.

The Court also noted that "in a prisoner setting, given the charges and counter charges revealed here, a court might well conclude that an inmate would be fearful of retaliation even without an entirely objective basis: rumor, suspicion, and the dependency of the inmate might parlay even a low objective probability of misconduct into a substantial subjective fear," and suggested that even subjective fear could be reasonable given the inherent dynamics of being incarcerated. *Travisono,* 495 F.2d at 564; *see also Rissman, Hendricks & Oliverio, LLP v. MIV Therapeutics, Inc.,* No. 11-10791-MLW, 2011 WL 5025206, at *5 (D. Mass. Oct. 20, 2011) (agreeing "that '[w]hile some forms of witness intimidation or document destruction doubtlessly necessitate injunctive relief under Rule 65, protective orders are also an appropriate vehicle to prevent interference with potential witnesses'") (citing *Travisono*, 495 F.2d at 564).

Given that Ms. Diamond and her witnesses are individuals currently in the custody of Defendants who have already experienced significant retaliation and backlash from Defendants and their agents, the misconduct set out above more than warrants court intervention. *Travisono,* 495 F.2d at 564 (granting protective order); *Harvard*, slip op. at 3 (protective order warranted "[b]ased on the alleged retaliation [inmate] has already suffered, [and his] fears [of] further retaliation if he continues to participate in this case.").

Applying the principles in in Rule 26(c) of the Federal Rules of Civil Procedure also supports the relief requested, which protects a party or person in the context of discovery based on "good cause" shown through a "particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements." *Ekokotu v. Fed. Express Corp*., 408 F. App'x 331, 335-36 (11th Cir. 2011) (quoting *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978));

or with the legitimate penological objectives of the correctional system.’”) (quoting *Pell v. Procunier*, 417 U.S. 817, 822 (1974)); *Al-Amin v. Smith,* 511 F.3d 1317, 1333 (11th Cir. 2008) (same). Not only have these actions negatively impacted Ms. Diamond’s ability to prosecute her case, they have created a situation where the court’s fact-finding may also be materially impaired. For all these reasons, Ms. Diamond’s Motion for a Protective Order should be granted.

II. Alternatively, the Court Should Issue Ms. Diamond a Protective Order Pursuant to the All Writs Act to Safeguard the Proceedings and the Court's Jurisdiction

The relief requested is also available pursuant to the All Writs Act, 28 U.S.C. UF4 (gr)3t1]TJ-0.0.Cches action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice," and (3) "even those who have not taken any affirmative action to hinder justice." *Klay*, 376 F.3d at 1100 (citing *N.Y. Tel. Co.*, 434 U.S. at 174); *Rohe v. Wells Fargo Bank, N.A.*, 988 F.3d 1256, 1263-64 (11th Cir. 2021) (affirming application to non-parties).

The traditional requirements for an injunction "do not apply to injunctions under the All Writs Act." *Klay*, 376 F.3d at 1100; *accord Rohe*, 988 F. 3d at 1265; *see also N.Y. Tel. Co.,* 434 U.S. at 174 (affirming grant of injunction under the All Writs Act without regard to traditional four injunction factors). Nor must a party seeking an All Writs Order "state a claim" in the traditional sense. *Klay*, 376 F.3d at 1100. Rather, it is enough to "point to some ongoing proceeding, or some past order or judgment, the integrity of which is being threatened by someone else's action or behavior," *Klay*, 376 F.3d at 1100, and show that: (1) the court already has an independent basis for its jurisdiction, *Burr & Forman v. Blair,* 470 F.3d 1019, 1027 (11th Cir. 2006); (2) the order

F.3d at 1027 (asking whether the court already has jurisdiction over a case); *N.Y. Tel. Co.*, 434 U.S. at 172 n.19 (same).

The All Writs order that Plaintiff seeks will aid the Court's jurisdiction and is also agreeable to the usages and principles of law for myriad reasons. The Eleventh Circuit has affirmed that All Writs injunctions may be properly issued where, as here, they will protect the integrity of a judicial proceeding that is at risk of being threatened by party and non-party conduct. *See, e.g.*, *Rohe*, 988 F.3d at 1266 (approving of orders that "serve to protect [a] proceeding . . . from some threat to its integrity."); *Klay*, 376 F.3d at 1099-1102 (same).

The threats articulated here are imminent and concrete: Ms. Diamond is facing ongoing retaliation at Coastal—including in the form of attempted witness tampering, falsification of institutional records, and altering her PREA victim status to obscure her history of victimization and imminent threat of harm she still faces—whose purpose or effect is to distort the evidentiary record, diminish Ms. Diamond's chances for release or transfer, and hinder this Court from reviewing Ms. Diamond's legal claims as thoroughly as justice requires. As such, the order sought here is agreeable to the usages and principles of law because it will permit the fair adjudication of Ms. Diamond's claims before this Court without undue obstruction and interference as the "rational ends of law" require. *See N.Y. Tel. Co.*, 434 U.S. at 172-73 (reciting standard); *Klay*, 376 F.3d at 1102 (approving of All Writs orders that "promote the resolution of issues in a case properly before it . . . [or] facilitat[e] . . . the court's effort to manage the case to judgment.") (citations omitted); *Dean Foods*, 384 U.S. at 608 (acknowledging the "express authority" of federal courts to orders that protect their own jurisdiction under the All Writs Act).

All Writs Act orders are also agreeable and appropriate where, as here, "prison officials [including non-defendants] allegedly have taken action that impedes a prisoner's ability to litigate