

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-176

JANUARY TERM, 2007

Byron Martin	}	APPEALED FROM:
	}	
v.	}	Caledonia Superior Court
Department of Corrections	}	
	}	DOCKET NO. 227-10-05 Cacv

Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals a superior court order dismissing his 42 U.S.C. ' 1983 claim against the Department of Corrections and two of its employees for failure to state a claim upon which relief may be granted. On appeal, plaintiff claims that the Department violated his right to procedural due process by holding him in solitary confinement for thirty days without a substantiated charge. We affirm.

Plaintiff is an inmate committed to the custody and control of the Commissioner of the Vermont Department of Corrections. He is serving a five to ten year sentence, with his minimum term set to expire on May 29, 2007. In April 2003, plaintiff alleges that two corrections officers concocted allegations of a disciplinary violation that resulted in his placement in punitive segregation. Even though he was exonerated of the disciplinary charge at an administrative hearing, plaintiff alleges that the officers conspired to keep him in segregation for thirty days. During his time in segregation, plaintiff had a lock down time of 6 p.m., compared to lock down times in his normal incarceration unit of 10 p.m. on weekdays and 1a.m. on weekends. He also was housed in a 6' by 8' cell, rather than the usual 12' by 15' cell.

On October 24, 2005, plaintiff filed a 42 U.S.C. ' 1983 complaint against the Department and the two employees, claiming that they had deprived him of his right to procedural due process in violation of the Fourteenth Amendment to the United States Constitution. Plaintiff sought \$100 for each day he spent in segregated confinement, as well as punitive damages.

The State moved to dismiss the complaint, claiming that sovereign immunity protected all defendants from suit. On April 6, 2006, the trial court granted the State=s motion to dismiss, concluding that plaintiff had no liberty interest in remaining free from segregated confinement and therefore his claim was not actionable under ' 1983. Plaintiff appealed.

A Rule 12(b)(6) motion to dismiss should be granted only when it is clear beyond a doubt that there exist no facts or circumstances that would entitle the plaintiff to relief. Richards v. Town of Norwich, 169 Vt. 44, 48 (1999). When reviewing a motion to dismiss, we assume that all reasonable inferences that can be drawn from the complaint are true and all contravening assertions are false. Id. at 48-49. To avoid dismissal, plaintiff=s ' 1983 claim must be predicated on a violation of federal law. Herrera v. Union No. 39 School District, 2006 VT 83, & 24. Here, plaintiff alleges a violation of procedural due process, which requires plaintiff to demonstrate that he had a protected liberty or property interest with which the State interfered. Id.

We agree with the trial court that plaintiff has failed to demonstrate that he had a constitutionally protected liberty interest in being placed in the general population rather than segregated confinement for thirty days. Liberty interests may arise directly from the Due Process Clause itself or from state laws. Kentucky Dep't of Corrs. v. Thompson, 490 U.S. 454, 460 (1989). The Due Process Clause itself confers a liberty interest when government action creates a change in the conditions or degree of confinement. Id. State laws will create a liberty interest in cases where a restraint imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. Sandin v. Conner, 515 U.S. 472, 484 (1995). In Sandin, the Supreme Court of the United States concluded that an inmate's discipline in segregated confinement did not present a case where a state law might conceivably create a protected liberty interest because his disciplinary segregation, with insignificant exceptions, mirrored those conditions imposed upon inmates in administrative segregation and protective custody, and thus was not atypical of ordinary prison life. Id. at 486. The Court further concluded that the Due Process Clause itself did not afford the inmate a protected liberty interest because the segregation would not affect the duration of the inmate's sentence. Id. at 487.

In accordance with Sandin, we conclude that neither state law nor the Due Process Clause itself affords plaintiff a liberty interest under the circumstances he alleges in his complaint. As in Sandin, plaintiff's placement in segregated confinement was not atypical of the ordinary incidents of prison life. Although plaintiff's cell was smaller and the lock down time earlier than in his regular unit, these differences, incurred for thirty days, did not present a dramatic departure from the basic conditions of plaintiff's sentence or work a major disruption in his environment. Id. at 486. In addition, plaintiff does not allege, nor is there evidence to suggest, that his temporary placement in segregated confinement will cause him to exceed his sentence in an unexpected manner.*

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

* Plaintiff alleged for the first time in his brief that he was cheated out of good time as a result of defendant's actions. This alleged injury was never raised in the trial court, either in his complaint or in his opposition to the motion to dismiss. Therefore, we do not consider it.