

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-1558
Summary Calendar

Fred M. Anderson,
Plaintiff-Appellant,

VERSUS

Ron Thompson, Warden, et al.,
Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Texas

(3:91 CV 2595 T)

(December 11, 1992)

Before THORNBERRY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

THORNBERRY, Circuit Judge*:

Plaintiff brought civil rights action against warden and others for placing him in administrative detention in violation of his liberty interest pursuant to 28 C.F.R. 541.22. The district court dismissed plaintiff's action on the grounds of qualified

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

immunity. We affirm.

Facts and Prior Proceedings

Fred Anderson, an inmate in the federal prison system, was placed in administrative detention pending an investigation for allegedly stealing blank medical prescription forms. He was in detention for approximately a week. After investigation, it was discovered that Anderson did not steal the prescription forms, although the forms were in his possession and not obtained through proper channels. Anderson filed a pro se complaint alleging that prison officials violated his constitutional rights, as well as prison regulations, when he was placed in administrative detention. Defendants filed a motion to dismiss or in the alternative summary judgment, and the district court dismissed the suit on qualified immunity grounds. Anderson appealed.

Discussion

Anderson claims that the district court erred in dismissing his suit on the basis of qualified immunity. The district court dismissed Anderson's suit because he did not allege acts sufficient to establish a violation of his clearly established constitutional rights of which a reasonable person would have been aware, citing **Harlow v. Fitzgerald**, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Normally, federal officials acting within the scope of

their discretionary functions are entitled to dismissal on the grounds of qualified immunity "unless the plaintiff's allegations state a claim of violation of clearly established law." **Mitchell v. Forsyth**, 472 U.S. 511, 526, 105 S.Ct. 322, 83 L.Ed.2d 259 (1985). Anderson did not plead a violation of clearly established law.

In **Hewitt v. Helms**, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed. 2d 675 (1983), the Supreme Court held that when a statute creates a protected interest, such as a liberty interest in avoiding administrative segregation, by setting up mandatory procedures governing the imposition of such segregation, the procedures must be followed. Appellant argues that the procedures found in 28 C.F.R. § 541.22 were not followed, therefore his liberty interests were violated. Under 28 C.F.R. § 541.22, the warden may place an inmate in detention when the inmate's continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate is under investigation of a violation of Bureau regulations. Under § 541.22(b), the warden is required to prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate within 24 hours of detention. Anderson argues that the statute authorizes detention only if the prisoner is a threat to security **and** if the inmate is under pending

investigation of a violation of Bureau regulations.¹ Anderson contends that because the statute utilizes the conjunctive "and", both reasons must be explained to the prisoner in the mandatory written report (why the prisoner is a "threat to security" and why there is an "investigation of violation of regulations").

While we acknowledge that the combination of statutes and regulations may well create a protected liberty interest, the process due plaintiff for the deprivation of that interest is measured by the constitution and not by the particulars of the rules. Plaintiff Anderson was given a written report explaining why he was placed in administrative detention within the 24 hour period prescribed by the statute. He was given fair notice of the charges and an opportunity to be heard administratively, therefore, while his liberty interest may have been violated, plaintiff was given due process, and that is all the constitution requires.

¹ § 541.22(a) **Placement in administrative detention.**

...The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e. en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when the inmate's continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

- (1) Is pending a hearing for a violation of Bureau regulations;
- (2) Is pending an investigation of a violation of Bureau regulations;
- (3) Is pending investigation or trial for a criminal act;
- (4) Is pending transfer;....

Without a constitutional violation, plaintiff has failed to allege a violation of a "clearly established constitutional right," therefore the petition must be dismissed. **Harlow**, 457 U.S. at 818.

Anderson also complains that the district court erred by not allowing him to amend his complaint to add four new defendants before it dismissed his action. Anderson did not need leave of court to amend his complaint because Anderson's amendment was filed prior to service of any responsive pleading. Anderson's real problem is that he never served the additional defendants, therefore they never became parties to the suit. **Nagle v. Lee**, 807 F.2d 435, 438 (5th Cir. 1987). However, this argument is moot because we affirm the dismissal for failure to state a claim.

Conclusion

Because Anderson has failed to allege the violation of a known constitutional right, we affirm the dismissal of his claim by the district court.