**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

---

**No. 92-2599**
**Summary Calendar**

---

**ELIBERTO G. REYNA and**
**EMETERIO M. HINOJOSA,**

**Plaintiffs,**

**EMETERIO M. HINOJOSA,**

**Plaintiff-Appellant,**

**v.**

**O.L. McCOTTER, ET AL.,**

**Defendants-Appellees.**

---

Appeal from the United States District Court
for the Southern District of Texas
CA H 86 1486

---

(July 1, 1993)

Before GARWOOD, JONES, and EMILIO GARZA, Circuit Judges.*

EDITH H. JONES, Circuit Judge:

Represented by appointed counsel, appellant Hinojosa alleged inter alia that he was wrongfully confined to administrative segregation (ad. seg.) in 1983 and then improperly classified as a gang member in 1985 and retained in ad. seg. since

---

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

then in retaliation for his legal activities. From the district court's grant of summary judgment to the defendants, he has appealed. We find no error and affirm.

The district court's grant of a motion for summary judgment is reviewed de novo. Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115, 1118-19 (5th Cir. 1992). Summary judgment is proper if the moving party establishes that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Letcher v. Turner, 968 F.2d 508, 509 (5th Cir. 1992); Fed. R. Civ. P. 56(c). This court uses the same standards as the district court and draws all inferences and views factual issues in favor of the party opposing the motion. Letcher, 968 F.2d at 509.

Hinojosa argues that the district court improperly granted summary judgment on several issues because a genuine issue of material fact exists concerning: (1) his original placement in maximum security; (2) his subsequent classification as a gang member; and (3) the constitutionality of TCDJID's administrative segregation review process.

Hinojosa's first claim is easily rejected because in July 1983, when he was originally placed in ad. seg., none of the named defendants was in way was connected with that decision and, as the district court held, they are not proper parties against whom to pursue a lawsuit. Harvey v. Andrist, 754 F.2d 651, cert. denied 471 U.S. 1126 (1985).

Hinojosa next argues that his classification as a disruptive gang member, which is supposedly the reason he has been detained in administrative segregation, violated TDC policy and his constitutional rights. According to Hinojosa's complaint, when he was identified as a gang member, he had "no history of and was not involved in gang-related activities." In Hinojosa's response to defendants' motion for summary judgment, he alleged various procedural defects in TDC's original determination that he was a gang member and in its subsequent confirmation that he was still a gang member.

A prisoner may have a state-created liberty interest in remaining in the general prison population as opposed to administrative segregation. Jackson v. Cain, 864 F.2d 1235, 1250 & n.6, 1251 (5th Cir. 1989) (citing Hewitt v. Helms, 495 U.S. 460, 103 S. Ct. 864, 74 L.Ed.2d 675 (1983)). As suggested by the defendants' motion for summary judgment, TDCJID policy requires that an inmate who is placed in ad. seg. has the right to be charged and receive notice of the charges, have counsel substitute appointed, be allowed to attend a committee hearing at which the prisoner is permitted to make a statement, be advised of the committee's determination that is based on prior conduct, and have the ad. seg. determination reviewed periodically.

The role of the federal court in reviewing such prison proceedings is a narrow one. The Supreme Court has articulated for the federal courts a policy of minimum intrusion into the affairs of state prison administration; state prison officials enjoy wide

discretion in the operation of state penal institutions. Wolff v. McDonnell, 418 U.S. 539, 555-80, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). "In reviewing prison administrative actions in section 1983 actions, the court must uphold the administrative decision unless it was arbitrary and capricious." Stewart v. Thigpen, 730 F.2d 1002, 1005 (5th Cir. 1984). Federal review of the sufficiency of the evidence at a disciplinary hearing is limited to determining only whether the findings are supported by "some facts" or "any evidence at all." Id. at 1005-06; Gibbs v. King, 779 F.2d 1040, 1044 (5th Cir.), cert. denied, 476 U.S. 1117 (1986).

In his response to defendants' motion for summary judgment, Hinojosa points out that his identification as a gang member first appeared on his November 1984 ad. seg. review hearing record. Under the category "Special conditions or restrictions required for security purposes," a prison official filled in the term "Mexican Mafia member." In the defendants' motion for summary judgment and their brief, they address Hinojosa's classification as a gang member starting only in 1985.

Accepting Hinojosa's allegation that this initial notation contributed to his confinement in ad. seg., summary judgment was appropriate under Hewitt. Although a state may create a liberty interest protected by the Due Process Clause by statute or regulation, Id., there was no such policy in effect in 1984 governing gang member classifications by TDCJID. Consequently, Hinojosa enjoyed no protected liberty interest. There being no

genuine issue of material fact as to the 1984 classification, summary judgment was proper.

Hinojosa's claim of unconstitutional classification as a gang member after 1985 fares no better. Hinojosa asserts that there was a policy in effect in 1985 and after to classify prisoners as gang members. The process allegedly entails an initial review by the Unit Classification Committee, a subsequent review by the Regional Director, and a final review by a member of the State Classification Committee. Hinojosa asserts that these procedures were not followed in his case and that there is insufficient evidence to support his classification as a gang member.

The claim that TDCJID did not follow its procedures--whatever those may have been--is meritless. A state's failure to follow its own procedural regulations does not necessarily constitute a violation of due process if "constitutional minima" are satisfied. Jackson, 864 F.2d at 1251. Hinojosa cannot establish a per se constitutional violation because he was provided less process than provided by TDCJID's rules.

Because there is some uncertainty in the record as to the precise nature of the gang member classification process from November 1985 until 1988, when TDCJID contends that it instituted formal classification procedures, it might be argued that the informality of the process meant that no liberty interest existed as of that time. Without deciding that question, however, we fail to see how the deviations from TDC "policy" that Hinojosa cites

were so gross as to violate his constitutional rights. But even assuming arguendo the existence and breach of a liberty interest, Hinojosa fails to show that his classification as a gang member furnished the only reason for his continuing in ad. seg. during 1985. As appellees point out, the prison records also reflect that Hinojosa possessed a 9" shank in his cell in early 1985, and he was identified as "staff assaultive." Nowhere has he challenged either of these grounds. Either of these reasons would have provided "some evidence" sufficient to maintain Hinojosa in ad. seg. Stewart v. Thigpen, 730 F.2d 1002, 1005-06 (5th Cir. 1984).

Hinojosa also fails to persuade that his classification as a gang member was itself arbitrary and capricious. Id. When Hinojosa was so classified, the factual basis for that decision included a report from the Arizona prison system, an informant at TDC and information from TDC's internal affairs unit. We will not consider the last two sources of proof, because the Arizona prison record standing alone furnished sufficient evidence to justify a gang member classification. That the Arizona record was cast into question on procedural grounds in late 1990, after this litigation was well underway, does not undermine its usefulness to prison authorities at an earlier date.

Finally, Hinojosa levies a constitutional challenge to the ad. seg. review process, which he describes as Kafkaesque, because there is allegedly no way that, once classed as a gang member, he will ever be removed from that status. Whether this is a correct statement of affairs is a provocative question but not

one subject to answer in this § 1983 claim for damages. Appellees point out that the presiding judge in the Ruiz case has approved TDC's ad. seg. procedure and presumably its review procedure as well. This being so, we have held that no § 1983 damage claim can be founded on a breach of Ruiz-court orders, Green v. McKaskle, 788 F.2d 1116 (5th Cir. 1986), although a plaintiff might seek to hold TDC in contempt for such a breach. If, on the other hand, Hinojosa is claiming that notwithstanding the approval of the Ruiz court, the ad. seg. review procedure is unconstitutional, we disagree. The isolated testimony he cites does not prove that no inmate, and specifically not Hinojosa himself, can ever be removed from a gang member classification. The testimony suggests only that such a classification, once made, is hard to overcome. We see no fundamental arbitrariness in this procedure.

We would observe that after it became clear that the Arizona prison system would no longer have classified Hinojosa as a gang member, the force of TDC's decision diminishes--on the record before us, there is no more than conclusional substantiation for the other bases for the gang member classification decision. Because the lawsuit by its nature does not raise a specific question as to Hinojosa's classification after 1990, however, and the record is not adapted to such a question, we do not consider it.

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.