

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3495
Summary Calendar

MICHAEL CARTER,

Plaintiff-Appellant,

VERSUS

BRUCE LYNN,
Secretary, Department of Corrections,
State of Louisiana, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
CA 91 364 B M1

June 11, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Michael Carter appeals the dismissal of his state prisoner's civil rights action brought pursuant to 42 U.S.C. § 1983. Finding no error, we affirm.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

On April 2, 1991, Carter filed his complaint alleging that his constitutional right to due process was violated when the secretary of the state department of corrections failed to notify him of disciplinary appeal decisions within 120 days. Carter also alleged that the defendants failed to perform their ministerial duties.

The charges resulting in Carter's transfer to extended lockdown stem from his involvement in a mail fraud scheme. On April 5, 1989, a special disciplinary board found Carter guilty of mail fraud and sentenced him to administrative lockdown. Carter's inmate counselor filed a notice of appeal on April 14, 1989, in accordance with the Disciplinary Rules and Procedures for Adult Prisoners. Id. On May 22, 1989, Carter received notice that his appeal had been received by the secretary and was being processed.

On July 17, 1990, Carter again was found guilty of mail fraud and placed in administrative lockdown. Carter appealed the conviction and sentence on August 16, 1990. On December 28, 1990, the appeal was determined to be moot because Carter had been released from prison for "good time." The parties do not dispute that Carter did not receive timely notice of the appeal decisions.

The defendants)) Bruce N. Lynn, Tony Sewell, Annette Viator, Hilton Butler, Larry Smith, John P. Whitley, Richard Peabody, and Dora Rabalais)) all Louisiana prison officials, filed a motion for summary judgment on January 2, 1992. The magistrate judge issued a report recommending that summary judgment be granted. On March 13, 1992, the district court concluded that the prison

disciplinary rules did not create a liberty interest in receiving an appeal decision within 120 days and granted summary judgment. The court declined to exercise its pendent jurisdiction over Carter's state law claim that the defendants had failed to perform their ministerial duties.

II.

Carter's pro se notice of appeal was not timely; his motion for extension of time to file an appeal, however, shows an intent to appeal and was filed within the requisite time. The motion was not ruled upon by the district court. "The notice of appeal requirement may be satisfied by any statement, made either to the district court or the Court of Appeals, that clearly evinces the party's intent to appeal." Page v. De Laune, 837 F.2d 233, 236-37 (5th Cir. 1988) (citation omitted).

III.

Carter argues that the prison disciplinary rules created a liberty interest in his receiving an appeal decision within 120 days of his appeal. He is incorrect.

La. R. S. 15:829 authorizes the secretary for the Louisiana Department of Public Safety and Corrections to establish rules and regulations for the maintenance of good order and discipline in correctional facilities. Rule 11 states that "[t]he Secretary will issue all appeal decisions within 120 days of the date of the last

hearing for each case." See Disciplinary Rules and Procedures for Adult Prisoners, p. 11.

In Hewitt v. Helms, 459 U.S. 460, 476 (1983), the Court held that a prisoner confined to administrative segregation need receive only some notice of the charges against him, within a reasonable time after pre-hearing detention, and be provided an opportunity to present his views to satisfy due process. We have augmented the analysis under Hewitt to include situations involving extended lockdowns. See McCrae v. Hankins, 720 F.2d 863, 866 & n.4 (5th Cir. 1983).

Specific rules do not automatically create liberty interests: Such an interest will be created only if the specific rule establishes mandatory, discretion-limiting standards. Olim v. Wakinekona, 461 U.S. 238, 249 (1983). The Disciplinary Rules and Procedures for Adult Prisoners of the Louisiana Department of Public Safety and Corrections do create "a substantive [liberty] interest in being free of extended lockdown." McCrae, 720 F.2d at 866-68. Due process in such cases does not require that the prisoner have an opportunity to call witnesses and present documentary evidence in his defense. See id.

Carter does not complain that he did not receive proper notice or a hearing. His complaint focuses only upon the fact that he was not informed of the outcome of his appeal in the time specified in the disciplinary rules.

Carter argues, in essence, that the disciplinary rules establish mandatory, discretion-limiting standards sufficient to

provide a state-created protective liberty interest in an appeal decision within 120 days. His argument lacks merit. See Bay v. Lynn, No. 92-3409 (5th Cir. Apr. 5, 1993) (unpublished). "A state's failure to follow its own procedural regulations does not automatically establish a violation of due process, because the 'constitutional minima may nevertheless have been met.'" Jackson v. Cain, 864 F.2d 1235, 1251 (5th Cir. 1989).

A protective liberty interest arises under Olim only if the state places substantive limits on an official's discretion. Indeed, the liberty interests protected by the due process clause "'cannot be the right to demand needless formality.' Process is not an end in itself. Its unconstitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement." Olim, 461 U.S. at 250 (citation omitted).

Although the prison rules establish certain procedural rights that include the right to an appeal decision, such rights, if violated, do not constitute a due process violation under the constitution unless language in the rules specifically creates such a right. The language in the rules prohibits extended lockdown "unless [the prisoner] has been afforded a full hearing . . . and was found guilty." The rules, although providing for "appeal decisions within 120 days," contain no language that grants a separate right not to be punished at all if a proper appeal is not conducted. Nor does Hewitt guarantee any kind of administrative appeal. See id. 459 U.S. at 476. Because the disciplinary rules do not contain a "substantive predicate" mandating the grant of an

appeal or any other outcome should the appeal decision not be rendered within 120 days, the "constitutional minima" were satisfied in this case when Carter received some kind of notice and a hearing.¹

Carter's reliance upon state law, including La. R. S. Ann. 9:27981, to support his argument that he has a liberty interest in an administrative appeal to the Secretary, is misplaced. The statute delineates the liability of public officials performing their policy-making or discretionary acts. Carter's contention may have some merit in a state court; that error would not be sufficient to trigger a due-process violation under McCrae, however, as Carter did receive some kind of notice and a hearing. See McCrae, 720 F.2d at 866-68. The language of the prison rules setting out the basis for extended lockdown grants no further liberty interest.

IV.

Because Carter's federal claims were properly dismissed on summary judgment, the district court correctly declined to exercise pendent jurisdiction over Carter's claims that the defendants failed to perform their ministerial duties. See United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966).

¹ Although McCrae was decided based upon the prison rules effective March 1981, see McCrae, 720 F.2d at 867, the language of the February 1986 rule book, upon which Bay relies to support a liberty interest, remains the same: "No prisoner can be placed in extended lockdown for any reason unless he has been afforded a full hearing before the Disciplinary Board"

V.

Carter's motions to amend his complaint, to supplement his statement of facts and add compensatory damages, and to address the court (two motions) are DENIED.

VI.

The judgment is AFFIRMED.