IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-9545
Summary Calendar

REGINALD R. ROBICHAUX,

Plaintiff-Appellant,

VERSUS

ROBERT TANNER, Warden,
In His Individual and Official Capacities,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
91 CV 4373

June 11, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Reginald Robichaux appeals the dismissal, as frivolous under 28 U.S.C. § 1915(d), of his state prisoner's civil rights suit brought pursuant to 42 U.S.C. § 1983. Finding no error, we affirm.

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[*] 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 Pursuant to that rule, the court has determined that this opinion should not be published.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.

Robichaux sued Deputy Warden Robert Tanner, alleging retaliation for using the prison grievance procedure. The magistrate judge recommended dismissing the action as frivolous. The district court declined to adopt the magistrate judge's report and recommendation and remanded to the magistrate judge.

Counsel was appointed for Robichaux, and the parties consented to trial before the magistrate judge. A telephone trial was held, during which Robichaux and Tanner testified and exhibits were offered. The magistrate judge determined that Tanner did not retaliate against Robichaux for using the prison grievance procedure and that Robichaux's First Amendment rights were not abridged. The magistrate judge dismissed Robichaux's complaint with prejudice. Robichaux proceeds on appeal pro se.

II.

A.

It is undisputed that Robichaux, utilizing the administrative remedy procedure, filed a grievance against correctional officer Sergeant Clyde Moody, regarding when Moody was supposed to open the dormitory doors. Plaintiff complained that

> [o]n Oct[.] 3, 1991 Sgt. Moody was trying to provoke me by talking to me in a very negative and stupid manner. I wrote Sgt. Moody up several times and [in] each I state about his stupid actions and hoe [he] is going to cause this prison some problems. I [am] tied of writing ARP on this man. It is about time someone do something. I'm asking the Administration to tell him to stop and do not start again. When something goes I have already made my statements.

Upon reviewing the ARP grievance submitted by Robichaux, Tanner charged Robichaux with a violation of Rule 7)) Disrespect, which states,

> Employees shall not be subject to unsolicited, non-threatening, abusive conversation, correspondence or phone calls. Prisoners shall address employees by proper title or by "Mr.", "Ms.", or "Mrs.", whichever is appropriate. No prisoner shall curse an employee in his absence.

Tanner prepared a disciplinary report objecting to Robichaux's references to Moody's "negative and stupid manner" and "stupid actions." He stated that Robichaux's remarks were not necessary for the purposes of pursuing his grievance. Robichaux was placed in administrative lockdown.

The district court's findings of fact are reviewed for clear error. Heath v. Brown, 858 F.2d 1092 (5th Cir. 1988). A finding that there was no retaliatory motive is a finding of fact that we must uphold unless it is clearly erroneous. See Bowles v. United States Army Corps of Eng'rs, 841 F.2d 112, 116 (5th Cir.), cert. denied, 488 U.S. 803 (1988). The Court noted in Anderson v. City of Bessemer City, 470 U.S. 564, 573-74 (1985), that

> [i]f the district court's account of the evidence is plausible in light of the record viewed n its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.

If prison regulations establish a liberty interest in the use of the prison grievance procedures, retaliation against a prisoner for the exercise of that right states a valid section 1983 claim.

Jackson v. Cain, 864 F.2d 1235, 1248-49 (5th Cir. 1989); see also Gartrell v. Gaylor, 981 F.2d 254, 259 (5th Cir. 1993). The Louisiana Department of Public Safety and Corrections established an administrative remedy procedure through which an inmate may seek formal review of any grievances or complaints. See Disciplinary Rules and Procedures for Adult Prisoners (the Handbook), p. 22. The Handbook states that "[t]hrough this procedure, inmates shall receive reasonable responses and where appropriate, meaningful remedies. Id. Under the heading "Reprisals," it further states that "[no] action shall be taken against anyone for the good faith use of or good faith participation in the [grievance] procedure." Id. at 27. This mandatory language arguably creates a liberty interest in the use of the prison grievance procedures. See Hewitt v. Helms, 459 U.S. 460, 471-72 (1983).

"Prison administrators [] should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell v. Wolfish, 441 U.S. 520, 547 (1979) (internal citations omitted). "Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters." Id. at 547-48 (internal quotation and citations omitted).

The district court found that Tanner did not discipline Robichaux in retaliation for using the grievance procedure and that Tanner was correct in concluding from Robichaux's statements that disciplinary action was necessary "to protect [the] institution, employees[,] or inmates." Tanner's response reflected his judgment that action was needed to preserve internal order and discipline to maintain institutional security. Tanner sentenced Robichaux to two weeks without radio and television privileges, with the sentence suspended for ninety days. Such a response does not appear to have been an exaggerated reaction to the situation. Consequently, the district court did not clearly err in finding that Tanner did not retaliate against Robichaux.

B.

Robichaux also challenges the constitutionality of Disciplinary Rule 7 on First Amendment grounds, arguing that charging him with a violation of rule 7 for using the word "stupid" was a violation of his freedom of speech. The district court concluded that rule 7 does not impermissibly inhibit Robichaux's freedom of expression. This determination is supported by Gibbs v. King, 779 F.2d 1040, 1045 (5th Cir.), cert. denied, 476 U.S. 1117 (1986), which upheld a previous and substantially similar version of rule 7 against a First Amendment challenge. The rule's purposes "are to prevent the escalation of tension that can arise from gratuitous exchanges between inmates and guards and to enable employees to maintain order without suffering verbal challenges to their

authority." Id. The judgment is AFFIRMED.