

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1861

Summary Calendar

PATRICK LEMAIRE,

Plaintiff-Appellant,

versus

MACK M. VINES, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:91-CV-1382-P)

(May 3, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

I.

Patrick Lemaire, a former Dallas police officer, brought a civil rights lawsuit against the City of Dallas, Mack Vines, a former Dallas police chief, Marlin Price, a Dallas assistant police chief, and Don Whitten, a Dallas police captain. Lemaire sued after being fired for shooting a suspected criminal in the line of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

duty. He alleged that the defendants investigated and terminated him on the basis of his race, denied him the equal protection of the law, and deprived him of his property rights in his employment without due process of law. The district court granted summary judgment. Lemaire appealed. We affirm.

II.

A police officer sued in his individual capacity may claim the defense of qualified immunity if he can establish that his conduct was lawful in light of clearly established law and the information he possessed. Anderson v. Creighton, 483 U.S. 635, 638 (1987). Under this standard, Lemaire had to show that a reasonable officer in the defendants' circumstances could have concluded that by taking the actions in this case, he would have deprived Lemaire of a federally protected right. Id. Lemaire has failed to do so because he has not established a genuine issue with respect to the violation of any constitutional right.

III.

The defense of qualified public immunity is available to public safety officials in the conspiracy context. Pfannstiel v. City of Marion, 918 F.2d 1178, 1187 (5th Cir. 1990). Whether the defendants' actions formed part of a conspiracy is an issue only if their actions were not objectively reasonable. Id. The defendants acted reasonably as supervising officers within the police department.

IV.

Lemaire argues that the court failed to consider the equal protection issue in granting summary judgment, but the court examined whether the investigation and termination process suffered from any equal protection infirmity and properly found no such problem. Lemaire has not produced any evidence that he suffered under any prejudicial treatment.

V.

A similar outcome is appropriate on Lemaire's procedural due process claim. Lemaire received adequate process both prior to and after termination. As a result of the post termination grievance process, Lemaire was even reinstated and received full back pay. Lemaire also alleges that the pretermination process deprived him of substantive due process rights, but again, he has proffered no evidence as to how the pretermination process violated his substantive rights.

VI.

The court granted summary judgment in favor of Vines although he did not request it. A court may grant summary judgment in favor of a party that did not request it so long as the adverse party has the chance to submit evidence creating a genuine issue of material fact. NL Indus., Inc. v. GHR Energy Corp., 940 F.2d 957, 965 (5th Cir. 1991), cert. denied, 112 S.Ct. 873 (1992). The other defendants had filed a motion for summary judgment and Lemaire had received the opportunity to put rebuttal evidence in the record. Although courts should be reluctant to grant motions for summary judgment sua sponte, a plaintiff cannot claim lack of notice where,

as here, he makes the same claims against all defendants, certain defendants move for summary judgment, he has an opportunity to defend against the motion, and the court grants the motion with respect to all defendants.

AFFIRMED.