

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-2506
Summary Calendar

TERRY J. BEMBRY,

Plaintiff-Appellant,

VERSUS

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas

(CA-H-90-1253 c/w H-92-478)

(May 20, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:*

Plaintiff Terry Bembry was fired from his job as a corrections officer on September 21, 1990 after three prior disciplinary citations were filed against him. In this case -- which is a consolidation of lawsuits he filed in 1990 and 1992 -- Bembry alleges that his employer, the Texas Department of Criminal

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Justice, Institutional Division¹ ("TDCJ"), (a) illegally discriminated against him because he was black, and (b) illegally retaliated against him for filing internal grievances and complaints with the Equal Employment Opportunity Commission.² On April 28, 1993, the district court entered summary judgment in favor of defendant TDCJ on the racial discrimination claim. After conducting a bench trial on the retaliation claim on May 27, 1993, the court concluded that Bemby had failed to establish a prima facie case of retaliation. The court found that TDCJ had articulated legitimate, non-discriminatory reasons for its actions in disciplining and terminating Bemby, and that Bemby failed to show that the given reasons were a pretext for discrimination. The court also reaffirmed its earlier decision that Bemby had not established a prima facie case of racial discrimination. On June 14, 1993, the court entered a final judgment dismissing Bemby's action with prejudice. We AFFIRM.

The trial court's task is not to review the merits or wisdom of the challenged personnel action, but to review the reason offered by the employer to determine whether the decision was more likely than not motivated by discriminatory reasons. Valdez v. San Antonio Chamber of Commerce, 974 F.2d 592, 596 (5th Cir. 1992). The trial court correctly found no basis to infer that the TDCJ's decisions to discipline and terminate Bemby were more likely than

¹Formerly the Texas Department of Corrections.

²Bemby's claims were brought pursuant to 42 U.S.C. § 2000e-2(a)(1) and 42 U.S.C. § 2000e-3. ("Title VII").

not motivated by an impermissible intent to retaliate against Bemby for engaging in the protected activity of filing grievances or claims with the EEOC.

The evidence at trial showed that Bemby was disciplined on four occasions for (1) playing dominoes with inmates while on duty and failing to perform assigned tasks; (2) challenging a supervisor's decision; (3) watching television while on duty; and (4) leaving an assigned security post in violation of an express order. The trial court found that these disciplinary actions were not baseless or fabricated, and that they were not taken in retaliation for Bemby's filing internal grievances or EEOC complaints. The court also found that the TDCJ's assignment of Bemby to a non-desired "watch-tower" assignment was not punitive and was done for legitimate reasons.

Under TDCJ guidelines, when an employee has been disciplined for four offenses of the type and severity of those at issue here within two years, it is mandatory that the employee be terminated. On August 29, 1990, following an investigation conducted pursuant to TDCJ written procedures, Bemby was terminated from his position.

We have carefully reviewed the briefs and the record of the bench trial, and we are satisfied that the decision of the trial court was correct. Bemby did not meet his burden of proof to establish a prima facie case of either racial discrimination or retaliation under Title VII. The TDCJ's reasons for the discipline,

work assignments and termination of Bembry were credible and were not a pretext for intentional discrimination or retaliation.

We therefore AFFIRM the judgment of the trial court.