

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3017

MAURICE GIBBS,

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-91-253-A-M1)

(July 12, 1994)

Before REAVLEY, JONES, and BENAVIDES, Circuit Judges.

EDITH H. JONES, Circuit Judge:*

Maurice Gibbs appeals the grant summary judgment for defendants in his suit filed under 42 U.S.C. § 1983 against various officials and employees of the Louisiana State Prison. Finding no error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

Gibbs, a state prisoner, filed a civil rights action challenging the constitutionality of his disciplinary hearing and the conditions of his confinement at the Louisiana State Penitentiary. Gibbs named as defendants Secretary of the Louisiana Department of Corrections Bruce Lynn; Warden John Whitley; corrections officers Leroy Holliday, Jimmy Johnson, Edgar DeVille, Jimmy Cole, Julius Burns, Tommy Gauthier, Ronnie Lundsford, and Kevin Dupuy; and unidentified medical personnel.

Gibbs alleged that he was assigned to a work squad for which he was required to pull sticker vines and Johnson grass, work which was inappropriate for him because of his medical condition.¹ When he and the other inmates on the squad complained about the working conditions, defendant Dupuy promised to "get minds right" in the morning. The next morning, Dupuy increased the work load and required the inmates to do work ordinarily performed by machinery. When the inmates complained that they could not complete the work and demanded to speak with Johnson, Dupuy announced that there was a "buck in 12-A." Assistant Warden Gunnel and defendants Holliday and DeVille arrived on the scene. After all of the inmates indicated a willingness to work, Gibbs inquired into the status of his complaints. Holliday then ordered that the entire squad be locked up in Out Camp J.

¹ In liberally considering Gibbs' brief before this court, as we are required to do, see McCrae v. Hankins, 720 F.2d 863, 865 (5th Cir. 1983), we recognize that some facts are disputed. Therefore, all facts are set forth here in the light most favorable to Gibbs.

The inmates appeared separately before the disciplinary board. Of the sixteen squad members, two were immediately disciplined for participating in the work buck and placed on extended lockdown. Thirteen were found guilty of participating in the work buck and given additional work. Gibbs' hearing was originally scheduled for July 2, 1990, but was deferred until July 9, 1990. At the July 9, 1990 hearing, Gibbs presented a defense but was found guilty of starting a buck and placed on extended lockdown.

After an appeal to the Secretary of Public Safety and Corrections was denied, Gibbs appealed his sentence to the district court complaining of the constitutionality of his disciplinary hearing. He claimed that the three inmates sentenced to extended lockdown were the only inmates who had pending grievances and that the defendants were motivated by revenge because of his extensive use of the grievance procedures.² He also alleged that prison authorities failed to provide him with written or adequate oral notice of the charges against him. Additionally, he complained of not being provided with an opportunity to present witnesses and documentary evidence, not being given a copy of the incident report, and not being told who would be called as a witness against him. He claimed that Johnson, the hearing officer, could not be impartial at his disciplinary hearing and DeVille could not conduct

² The record indicates that Gibbs has been involved in at least twenty-five other lawsuits relating to his imprisonment. See R. 2:1. He also admits to being involved in excess of 100 prison disciplinary board hearings. See Affidavit of Maurice Gibbs, R. 1:527.

a proper independent investigation because Gibbs' complaint concerned both Johnson and DeVille. He also complained that the charge against him was meritless.

In response to Gibbs' claims, the defendants moved for summary judgment, and, noting that the defendants' motions were unopposed, the magistrate judge recommended their motions be granted except as to Gibbs' claim that he had been denied due process in connection with his disciplinary hearings. The district court adopted the recommendations of the magistrate judge in their entirety. The claims against defendants Lundsford and Gauthier were dismissed for failure to prosecute.

With consent of the parties, the district judge subsequently ordered that, pursuant to 28 U.S.C. § 636(c), the magistrate judge was authorized to conduct all further proceedings and enter all judgments. Gibbs and the remaining defendants then filed cross-motions for summary judgment, and the magistrate judge entered summary judgment in favor of the remaining defendants and dismissed the lawsuit. Gibbs now appeals on numerous grounds. We will consider each of his claims in turn.

ANALYSIS

Disciplinary Hearing Procedure

Gibbs first complains that he was denied due process in connection with his disciplinary hearing because he did not receive adequate notice of the hearing and was not permitted to call

witnesses on his own behalf.³ The magistrate judge assumed for purposes of the motion that pursuant to Wolff v. McDonnell, 418 U.S. 539, 563-66, 94 S.Ct. 2963 (1974), Gibbs had been denied due process in connection with his disciplinary hearings. The court stated that "there are factual issues in dispute as to whether [Gibbs] received written notice of the charges against him prior to the disciplinary board hearings held July 2 and 11 and whether [he] requested to call witnesses at the hearings." Nevertheless, the court concluded, summary judgment was appropriate because, in accordance with Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194 (1984) and Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908 (1981), a "random and unauthorized intentional deprivation of a liberty interest by a state employee does not constitute a violation of the procedural requirements of the due process clause of the fourteenth amendment if a meaningful post-deprivation remedy for the loss is available."⁴ Although we agree with the district court that summary judgment was appropriate, we so conclude for different reasons.

Gibbs first complains that his disciplinary hearing violated due process because he was not given 24-hours notice of the charges against him. However, the due process clause does not

³ Gibbs also seems to suggest that the disciplinary hearing panel before whom he appeared was biased against him. However, this contention is given only passing reference and was not adequately briefed to this court. Therefore, it will not be considered on appeal.

⁴ This conclusion by the magistrate judge was made without taking into consideration Chambers v. Stalder, No. 92-3910 (5th Cir. Aug. 4, 1993), an unpublished opinion. The state, although asked to comment on Chambers, did not do so in its brief to this court.

require 24-hours notice. In a case such as this, in which the potential punishment affects the prisoner's custody classification and not his eventual release, due process merely requires that the prisoner receive "some" notice of the charges against him. See McCrae v. Hankins, 720 F.2d 863, 868 (5th Cir. 1983) (relying on Hewitt v. Helms, 459 U.S. 460, 103 S.Ct. 864, 872 (1983)). Moreover, it is clear from the record that Gibbs did have adequate notice of the charges against him. Gibbs' submissions indicate that on July 2, 1990 he had notice of the charges against him because by that date he had developed a defense theory, had learned who had filed the report against him, and knew what the charges were. See Gibbs' Statement of Undisputed Facts, R. 1:521. Therefore, Gibbs' position that he did not have sufficient notice of the charges against him is baseless.

Gibbs also complains that his constitutional rights were violated in that he was not permitted the opportunity to present witnesses on his own behalf at the disciplinary hearings. However, an inmate facing restrictive confinement does not have to be afforded the opportunity to present witnesses or other evidence apart from his own personal statement. See id. at 868. Rather, the due process clause requires only that prison officials conduct an informal, nonadversary review of the evidence surrounding an inmate's restrictive confinement and provide the inmate with an opportunity to present his views to the prison official in charge of deciding whether to transfer him to restrictive confinement. See id. at 868 (relying on Hewitt v. Helms, 459 U.S. 460, 103 S.Ct.

864, 872 (1983)). Gibbs did appear at his disciplinary hearing and was permitted to give his version of the incident to the prison officials. See Affidavit of Maurice Gibbs, R. 1:525-228. These events satisfy the minimum requirements of due process.

Extended Lockdown

Gibbs next complains that being sentenced to extended lockdown for an indefinite period of time was a disproportionate punishment in response for his being found guilty of starting a buck among the inmate work crew. He claims that this punishment caused him physical and mental suffering.

The law is clear that "administrative segregation is the sort of confinement that inmates should reasonably anticipate receiving at some point in their incarceration." Hewitt v. Helms, 459 U.S. 460, 468 103 S.Ct. 864, 870 (1983). The decision to confine Gibbs to administrative segregation for an indefinite period of time falls within the prison authorities' broad administrative and discretionary authority over the prisons that they manage. Gibbs' constitutional rights were not violated by his sentence to extended lockdown.

Conspiracy Claims and Retaliation

Gibbs complains next that the district judge erred in dismissing Gibbs' conspiracy claims because they were conclusory and without evidence and by ruling there was no evidence that Gibbs was issued a disciplinary report in retaliation for complaining of his work conditions. The magistrate judge stated that the "summary

judgment evidence is clear" that the inmates decided to stop working.

In his brief before this court, Gibbs' claims of conspiracy are again conclusory. Moreover, Gibbs provided the court with no summary judgment evidence sufficient to support his claims of conspiracy and retaliatory behavior.

Pre-hearing Isolation

Gibbs next complains that he was placed in "isolation" for sixteen days prior to his hearing. He claims that isolation is more punitive in nature and is designed to be utilized in only the most egregious of situations. Gibbs claims that pursuant to prison regulation, isolation can only be imposed upon an inmate by the disciplinary board after a hearing.

The summary judgment evidence indicates that Gibbs was not placed in pre-hearing isolation, but was actually in administrative lockdown. See Affidavit of John P. Whitley, R. 1:320. There is no summary judgment evidence to the contrary. As stated earlier, the law is clear that prison authorities have discretion to place an inmate in segregated facilities pending investigation into misconduct charges against him. See Hewitt v. Helms, 459 U.S. 7860, 103 S.Ct. 864 (1983). Therefore, it was well within the prison officials' discretion to place Gibbs in administrative lockdown pending his disciplinary hearing. Gibbs' constitutional rights were not violated in this regard.

Lockdown Cell Conditions

Gibbs claims that while in lockdown, he was forced to endure conditions that constitute cruel and unusual punishment in violation of the eighth amendment. He claims that he was deprived of adequate ventilation, sanitation, food, hygiene items, medical treatment, nutrition, human contact, recreation, and written communication or correspondence.

Summary judgment on this issue turns on whether a reasonable person would find that the conditions of lockdown violated contemporary standards of decency. See Sampson v. King, 693 F.2d 566, 568 (5th Cir. 1982). To stand a chance of defeating the defendants' motion for summary judgment, Gibbs was required to raise a material issue supported by specific, non-conclusory affidavits or other competent summary judgment evidence. See Reese v. Anderson, 926 F.2d 494 (5th Cir. 1991); see also Fed. R. Civ. P. 56. He has failed to do so. Gibbs presented the court with no summary judgment evidence to support his claims that he was subject to conditions amounting to punishment in violation of the eighth amendment.

Charging Provision

Gibbs next complains that he was charged and found guilty of violating a "catch-all" disciplinary provision that failed to warn him adequately of the proscribed conduct. He claims that the offense of inciting a "work buck" is not a defined term and, therefore, is not explicitly proscribed.

The record indicates that Gibbs was found guilty of violating Rule #28 which provides that a prisoner may be given a disciplinary report for a work offense. See Record 1:474. Inciting a work stoppage falls clearly within the category of a work offense. Gibbs' claim that he was convicted of conduct for which he was not on notice is without merit.

Magistrate Judge's Ruling of Starting a Work Buck

Gibbs next complains that the district court erred in failing to address his objection to the magistrate judge's ruling. Gibbs complained to the district court that the magistrate judge erred in failing to address his argument that there was no evidence to support a finding that Gibbs started a work buck.

Courts reviewing complaints concerning factual findings of prison disciplinary hearings have a very limited role. They are required only to consider whether the decision of the disciplinary board is supported by some facts or any evidence rather than conduct a de novo review of the evidence. See Stewart v. Thiqpen, 730 F.2d 1002, 1005-06 (5th Cir. 1984).

The magistrate judge's recommendations state that "[t]he summary judgment evidence is clear that the inmates on Squad A decided amongst themselves to simply stop working." We agree. Furthermore, there is sufficient evidence in the prison disciplinary file indicating that Gibbs was an instigator of the work stoppage. Accordingly, Gibbs' claim that he was improperly found guilty of a starting a work buck is denied.

Gibbs' Letter to the Court

Gibbs next complains that the district court erred in not taking into consideration, prior to granting the defendants' motion for summary judgment, a letter that Gibbs sent to the court explaining why he was unable to respond to the defendants' motion for summary judgment. In the letter, Gibbs stated that he was unable to respond to the defendants' pleading because he was unable to work on his legal matters while in administrative lockdown. Gibbs' letter was neither in the form of an affidavit nor made under penalty of perjury. See R. 1:322-23.

Fed. R. Civ. P. 56(f) makes it discretionary with the court to refuse a party's request for summary judgment because the opposing party is unable to respond. Although the district court could have liberally construed Gibbs' letter as a motion for an extension of time to respond, it was not required to do so. See Fed. R. Civ. P. 6(b). Therefore, the court acted within its discretion in not taking into consideration Gibbs' letter and deciding to grant the defendants' motion for summary judgment.

Dismissal for Failure to Prosecute

Gibbs next complains that the district court erred in dismissing his claims against Tommy Gauthier and Ronnie Lundsford because of failure to prosecute. This claim is without merit.

For whatever reason, Gibbs was unable to secure service upon both of these individuals. Therefore, the district court did not have jurisdiction over Gauthier and Lundsford and acted well within its discretion in dismissing Gibbs' claims as to them.

**Medical Classification and Attention, Protective Gear,
and Work Assignment Claims**

Gibbs claims, without elaborating further or providing any details, that the district court erred in granting summary judgment for the defendants on medical classification, protective gear, medical attention, and inappropriate work assignment claims. The appellees respond that the summary judgment evidence established that the defendants did not demonstrate deliberate indifference toward Gibbs' medical needs. The evidence, consisting of prison medical records properly offered, shows that Gibbs was issued temporary medical duty status of limited duty -- Squad A duty -- for eight months beginning in June 1990 for his back problems. Toward the end of June 1990, all Squad A workers were assigned to work pulling weeds and grass by hand after this activity was designated by the doctor as appropriate work for Squad A.

To prevail on an eighth amendment claim for deprivation of medical care, Gibbs must prove that medical care was denied and that the denial of medical care constituted deliberate indifference to serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285, 291 (1976); Johnson v. Treen, 759 F.2d 1236 (5th Cir. 1985). Prison work requirements can constitute an eighth amendment violation when prison officials knowingly compel inmates to perform physical labor which is beyond their strength or which constitutes a danger to their lives or health or which is unduly painful. See Howard v. King, 707 F.2d 215 (5th Cir. 1983).

Again, there is no appropriate summary judgment evidence supporting Gibbs' contention of deliberate indifference on the part of the defendants. Gibbs' statements to this court are conclusory and without support in the record. Summary judgment for the defendants was appropriate on this issue.

CONCLUSION

For these reasons, the judgment of the district court is AFFIRMED.