

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3159  
Conference Calendar

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EDDIE LEE MARSHALL,

Plaintiff-Appellant,

versus

BRUCE N. LYNN, Secretary, Department of  
Corrections, State of LA, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. CA-91-523-B-M2  
- - - - -

August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Eddie Lee Marshall, a prisoner at the Louisiana State Penitentiary, proceeding pro se and in forma pauperis, filed this civil rights action under 42 U.S.C. § 1983 alleging that his constitutional rights were violated because the 1986 Disciplinary Rules and Procedures for Adult Prisoners had not been registered in accordance with the Louisiana Administrative Procedures Act [La. Rev. Stat. 49:950, 953-54 (West 1987)], and the consent decree entered in Ralph v. Dees, C.A. No. 71-94 (M.D. La. 1975).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The district court granted the defendants' motion to dismiss because Marshall's complaint did not state a claim under § 1983.

Marshall argues that the district court erred in denying his motion for summary judgment and granting the defendants' motion to dismiss because the Louisiana Administrative Procedures Act and the consent decree in Ralph v. Dees affords him a protected liberty interest in being free from disciplinary action under rules and procedures which were not promulgated in compliance with their terms.

In reviewing a dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6), this Court must accept all well pleaded facts as true and view them in the light most favorable to the plaintiff. Cooper v. Sheriff, Lubbock County, Texas, 929 F.2d 1078, 1082 (5th Cir. 1991). This Court may not uphold the dismissal unless "it appears `beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (other citations omitted).

Accepting as fact Marshall's allegations that the amendments to the Disciplinary Rules and Procedures were not promulgated in accordance with the Administrative Procedures Act or the consent decree in Ralph v. Dees, these facts do not state a claim under § 1983.

In order to state a claim under 42 U.S.C. § 1983, the plaintiff must allege a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States. Parrat v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1908, 68

L.Ed.2d 420 (1981). This Court has previously rejected a similar claim, holding in Martin v. Blackburn, 581 F.2d 94 (5th Cir. 1978), that a "claim that state officials have failed to follow the procedural provisions of state law, without more, does not aver a cause of action under § 1983." The Louisiana Administrative Procedures Act does not create a liberty interest in the promulgation of prison rules in accordance with state law. See Welch v. Roemer, No. 92-3017 (5th Cir. Mar. 18, 1992) (unpublished). Marshall's argument that the consent decree in Ralph v. Dees created a protected liberty interest has no merit. Remedial decrees do not create or enlarge constitutional rights and do not serve as the basis of § 1983 liability. Green v. McKaskle, 788 F.2d 1116, 1122-23 (5th Cir. 1986).

Marshall's action is DISMISSED AS FRIVOLOUS. See Fifth Cir. Loc. R. 42.2.