

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-3578
Summary Calendar

ROBERT DEEMER,

Plaintiff-Appellant,

VERSUS

EUGENE SMITH, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA-91-89-M1)

(August 29, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Robert Deemer, a former inmate of the Dixon Correctional Institution ("DCI"), appeals the district court's dismissal of his § 1983 action against Elijah Lewis. We affirm.

On August 21, 1990, DCI Correctional Officer Steven Thomas

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

filed an "Incident Report" relating to Deemer. As the "Nature of Incident," Thomas wrote "Investigation (Threat to Security)." In describing the incident, Thomas stated that Deemer had told him that he "could not live on the same unit with inmate Ayrow."² As a result, Deemer was placed in administrative lockdown pending further investigation.

Deemer was afforded a hearing on Officer Thomas's report on August 24, 29, and 31, 1990. Deemer pled not guilty. Defendant, Elijah Lewis, was chairman of the disciplinary board that held the hearing. At the hearing, Capt. Eugene Smith reported that Deemer "is a threat to security because of a problem on Unit I and that he should remain on Unit II and be restricted from Unit I." Based on this report, the board found Deemer guilty and ordered him transferred to Unit II.

Deemer argues that Lewis denied him procedural and substantive due process in violation of **Wolff v. McDonnell**, 418 U.S. 539 (1974). Deemer maintains that "Lewis knew that his decision was arbitrary and without any reason, evidence or facts to support a finding of guilt."

The district court concluded that the disciplinary board erred in finding Deemer guilty because "there was nothing in defendant Smith's reports which would support a finding that [Deemer] had planned or committed any specific act of misbehavior which constituted a threat to the security of the institution, . . . as

² In May 1990, Deemer had been involved in a fight with Ayrow.

required by the disciplinary rules to support an incident report." The district court concluded, however, that there was no evidence that "Lewis found [Deemer] guilty of the incident report in order to knowingly and intentionally deprive him of due process."

Louisiana's Disciplinary Rules and Procedures for Adult Prisoners provide for Disciplinary Reports, Incident Reports, and Investigation Reports. An Incident Report or an Investigation Report can be filed regarding an "Attempted Escape, Violence, . . . or any other clear, immediate threat to security." However, inmates cannot be placed in extended lockdown unless they "have been found guilty of serious misbehavior, . . . require protective custody," or were "initially classified as maximum security prisoners." See **McCrae v. Hankins**, 720 F.2d 863, 868 (5th Cir. 1983).

In **McCrae**, we held that Louisiana inmates have a liberty interest in being free of extended lockdown. **Id.** at 868. We noted, however, that this interest is adequately protected if an inmate is afforded the process laid out in **Hewitt v. Helms**, 459 U.S. 460 (1983). Under **Hewitt**, prison officials are required to engage in an "informal, nonadversary review" of the evidence surrounding an inmate's restrictive confinement. **Id.** at 476. In addition, the inmate must receive "some notice of the charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him" to restrictive confinement. **Id.**

In this case, Deemer received the process that he was due

under **Hewitt**. Moreover, there were "some facts" presented at the hearing to support the board's finding of guilt. **See Gibbs v. King**, 779 F.2d 1040, 1044 (5th Cir.), **cert. denied**, 476 U.S. 1117 (1986). Evidence was presented suggesting that a potential security threat existed unless Deemer was transferred and restricted to a unit other than the one in which Ayrow lived. We therefore affirm the district court's dismissal of Deemer's § 1983 suit.³

AFFIRMED.

³ Deemer asserts for the first time in his reply brief that the district court erred by dismissing his claims against the other appellees. We do not consider arguments made for the first time in a reply brief. **Unida v. Levi Strauss & Co.**, 986 F.2d 970, 976 n.4 (5th Cir. 1993).