

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4635
Conference Panel

DARNELL JOHNSON,

Plaintiff-Appellant,

versus

LT. J. CRAIG ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:92cv141

(October 27, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges
BY THE COURT:

As Darnell Johnson's motion seeking leave to proceed in forma pauperis (IFP) on appeal presents no non-frivolous issues, IT IS ORDERED that his motion is DENIED, and the appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.

Johnson argues that he was placed in pre-hearing detention and later found guilty of violating prison regulations in violation of his procedural due process rights. He was placed in solitary confinement for ten days. The procedures in the instant case fully comported with the parameters established by the Supreme Court in Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), which held that a prisoner who may lose good-time credits or be sentenced to solitary confinement as a

result of a prison disciplinary proceeding must be afforded written notice of a hearing at least 24 hours in advance, a written statement of the evidence relied upon and the reasons for the disciplinary action, and the opportunity to call witnesses and present documentary evidence in his defense unless these procedures present a security risk in the particular case.

Wolff, 418 U.S. at 563-66.

Johnson also argues that he was held in pre-hearing detention for six days before he received any notice of the charges against him. He further contends that he was confined in pre-hearing detention for eleven days before the hearing was held, in violation of prison regulations. Under Ruiz v. Estelle, 666 F.2d 854, 868 (5th Cir.), aff'd in part, rev'd in part, 679 F.2d 1115 (1982), if a prisoner is not given a hearing within three days of his placement in pre-hearing detention, the prison authorities must provide a written explanation for the delay. The prison authorities in the instant case complied with this mandate, stating that "investigation, weekend, and holidays" prevented a hearing within 72 hours. Johnson's hearing was within ten days of his placement in pre-hearing detention. There was no violation of Johnson's procedural due process rights.

Finally, as the sexually explicit poem written by Johnson provides the requisite evidentiary support for the disciplinary officer's finding that Johnson was guilty of soliciting an officer, this finding will be upheld by this Court. See Gibbs v.

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King, 779 F.2d 1040, 1044 (5th Cir.), cert. denied, 476 U.S. 1117
(1986) (citations omitted). APPEAL DISMISSED.