

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5599
Conference Calendar

CARDELL FRANKLIN BURTON,

Plaintiff-Appellant,

versus

HOLAN A. PITTCOCK,
Disciplinary Hearing Captain, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:93-CV-136
- - - - -

(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

BY THE COURT:

Cardell Franklin Burton, an inmate of the Texas Department of Criminal Justice (TDCJ), filed a pro se complaint under 42 U.S.C. § 1983, alleging that his due process rights were violated when he was "written up" and found guilty of destroying the bunk in his cell. After conducting a hearing pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985), and after reviewing an audiotape of the disciplinary hearing, the magistrate judge determined that Burton received due process at disciplinary proceeding.

Burton has applied for leave to appeal in forma pauperis (IFP) the magistrate judge's dismissal of his claim. This Court may authorize Burton to proceed IFP on appeal if he is

economically eligible and his appeal is not frivolous. See Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986).

A federal court reviews a state prison disciplinary proceeding only to determine if it was arbitrary an capricious. Stewart v. Thigpen, 730 F.2d 1002, 1005-06 (5th Cir. 1984). Due to the nature of the punishment involved, the procedural due process protections espoused in Hewitt v. Helms, 459 U.S. 460, 476-77, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983), are applicable. See Dzana v. Foti, 829 F.2d 558, 561 (5th Cir. 1987). Burton was entitled to some notice of the charges against him and an opportunity to present his views to a prison official determining the disciplinary action. Hewitt, 459 U.S. at 476-77. The disciplinary board's factual findings are reviewed only to determine whether the decision is supported by "some facts" or "any evidence at all." See Stewart v. Thigpen, 730 F.2d 1002, 1006 (5th Cir. 1984)(internal quotations and citation omitted).

Burton was afforded the process due him. Burton presents no non-frivolous issue on appeal; therefore, it is ORDERED that his request for IFP is DENIED and the appeal is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.