

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7352
Summary Calendar

OLLIE PORTER,

Plaintiff-Appellee,

versus

EDDIE LUCAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
(4:91-CV-299-B-D)

(March 24, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit Judges.

PER CURIAM:*

Eddie Lucas, Director of Inmate Classification at the Mississippi State Penitentiary at Parchman, appeals a judgment for \$300 in favor of Ollie Porter, a former inmate, rendered pursuant to 42 U.S.C. § 1983. Finding neither a factual nor legal basis to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

support the judgment, we reverse and render.

Porter was charged with assaulting a correctional officer. After a timely hearing a duly constituted disciplinary committee recommended isolation for 20 days with a concomitant suspension of certain privileges because of the temporary change in custodial status. Lucas approved the recommendation, directing that Porter be reclassified after the 20 days. For reasons not explained in the record, Porter was not transferred back into the general prison population until 12 days after conclusion of the 20-day period of isolation. That transfer was done pursuant to paperwork routinely initiated by Porter's case manager and signed by Ann Lee, Assistant Director of Offender Services, acting for the then-absent Lucas.

Porter's section 1983 action complained of the additional 12 days of isolation and the loss of certain custodial privileges during that period. The matter was referred to a magistrate judge for an evidentiary hearing,¹ following which a report was made, recommending a rejection of the complaint for extended isolation but allowing the complaint for loss of privileges, translated into the sum of \$25 per day. The district court accepted the report and rendered judgment in favor of Porter and against Lucas personally in the sum of \$300. Lucas timely appealed.

We review findings of fact under the clearly erroneous standard and conclusions of law *de novo*.² There is no record

¹28 U.S.C. § 636(b)(1)(B).

²**Chandler v. City of Dallas**, 958 F.2d 85 (5th Cir. 1992), appeal after remand, 2 F.3d 1385 (5th Cir. 1993).

evidence of Lucas' personal involvement in the failure to restore Porter to the general prison population after the 20 days of isolation he had approved. The record is devoid of proof that Lucas was even aware of Porter's status during or at conclusion of the excess 12-day period. Therefore there is no factual basis for casting Lucas in judgment for a personal act of omission or commission. That leaves, therefore, only legal liability based on the doctrine of *respondeat superior*. That doctrine has no applicability in section 1983 litigation.³ There is no basis for casting Lucas in judgment. In finding and concluding otherwise the district court erred.

The judgment of the district court is, accordingly, REVERSED. Porter's demands against Lucas are DISMISSED with prejudice.

³**Williams v. Luna**, 909 F.2d 121 (5th Cir. 1990).