

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7468  
Summary Calendar

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THOMAS RITCHIE McBRIDE,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director,  
Texas Department of Criminal Justice,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-G-93-242  
- - - - -  
(January 19, 1994)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

Thomas Ritchie McBride appeals the dismissal of his civil rights complaint, that prison officials wrongly confiscated his radio, as frivolous. A complaint may be dismissed as frivolous "where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992).

State prison regulations may create an interest that is

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

protected by the Due Process Clause. Dzana v. Foti, 829 F.2d 558, 561 (5th Cir. 1987). However, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Cuellar v. Texas Employment Comm'n., 825 F.2d 930, 934 (5th Cir. 1987)(citations and internal quotation marks omitted). "The level of process due a prisoner depends in part on the severity of the sanction to be imposed and the needs of the institution." Cooper v. Sheriff, Lubbock Co., Texas, 929 F.2d 1078, 1083 (5th Cir. 1991). "[S]ome form of hearing' is required before the owner is finally deprived of a protected property interest." Logan v. Zimmerman Brush Co., 455 U.S. 422, 433, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982). "[T]he timing and nature of the required hearing `will depend on appropriate accommodation of the interests involved.'" Id. at 434 (citation and footnote omitted). Those interests are the importance of the private interest involved and the length or finality of the deprivation; the likelihood of error by the government; and the magnitude of the governmental interest involved. Id.

According to McBride, the warden responded to his step-one grievance as follows: "As you admit, the radio in question is clearly altered and therefore contraband. It will not be returned. You will be allowed to send it home at your expense." The regional director responded to McBride's step-two grievance as follows: "We defer to the unit response. Make arrangements to send the radio home, before it is destroyed. No Regional Office intervention indicated; appeal denied." The deputy

director responded to McBride's step-three grievance as follows:  
"Appeal denied. The policy regarding altered property is established and clear. You have provided nothing to justify further inquiry into this matter. Follow the instructions you have been given."

Based on his own allegations, McBride received due process through the grievance procedure. Even assuming that McBride has an important interest in possessing the radio and that the deprivation is permanent, that interest is outweighed by the prison's interests. First, the likelihood of error by the decisionmaker was minuscule -- McBride admits that he glued match-sticks to the exterior of the radio; that action altered the radio and placed it within the definition of "nuisance contraband." Second, the prison has a strong interest in regulating prisoners' property and in suppressing contraband. See Logan, 455 U.S. at 433.

AFFIRMED.