UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8404
Summary Calendar

CHARLES YOUNG,

Plaintiff-Appellant,

VERSUS

DEBORAH PARKER, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W-92-CV-239)

(April 29, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

DAVIS, Circuit Judge:[1]

Young complains of the dismissal of his prisoner's § 1983 suit. We affirm.

I.

Charles Young, proceeding **pro se** and **in forma pauperis**, filed a complaint pursuant to 42 U.S.C. § 1983. Young sued Deborah Parker, Jack M. Garner, Jose Colon, and Jimmy Trevino, officials at

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the Hughes Unit of the Texas Department of Criminal Justice-Institutional Division (TDCJ) in their individual and official capacities. Young alleged that several of his constitutional rights were violated when he was found guilty at a disciplinary hearing of inciting a riot. He sought declaratory, injunctive, and monetary relief.

A magistrate judge conducted a hearing pursuant to **Spears v. McCotter**, 766 F.2d 179, 181-82 (5th Cir. 1985). Thereafter, the magistrate judge ordered that the defendants be served. The defendants answered the complaint, arguing, inter alia, that they were entitled to immunity from Young's suit.

Young's complaint and **Spears** hearing testimony set forth the following. On July 4, 1991, Young was returning from "noon-chow" to his assigned building. He observed two officers running toward him for unknown reasons, when one of the officers told Young and other inmates coming from the noon chow to "hold-up," which apparently required that Young place his hands on the wall. The officer then instructed Young to move into a waiting room. About ten to fifteen minutes later, the officer told Young to go to his living quarters and "rake-up." He went to his section and waited in the day room until he was placed in his cell. He later learned that a fight between a black inmate and a white inmate had occurred in the dayroom.

On July 17, 1991, Young was served with a disciplinary report for the July 4, 1991 offense. The report was initiated by Defendant Trevino and charged Young with joining in a group of

black inmates who assaulted white inmates on July 4, 1991, in the day room. At the disciplinary hearing, Trevino testified that he never saw Young hit, kick, or otherwise assault anyone on July 4, 1991. Young was found guilty but appealed the decision. The case was overturned, and the Unit was given the option to retry it. After Young filed a grievance for the false disciplinary report, Young was served with a second notice of a disciplinary charge (No. 910101258) for rioting on July 4, 1991. After a hearing on the charges, Young was found guilty and punished. The finding was overturned in an administrative appeal. Young was served with a third disciplinary charge (No. 920005248) for rioting on "08/22/91." He was punished by being placed in administrative segregation for 22 1/2 hours daily and all privileges were rescinded.

Young alleged that the disciplinary notice failed to provide him adequate notice of the charges against him; that he was denied the opportunity to call witnesses, including the individuals whom he was accused of assaulting; that the evidence was insufficient to support the guilty verdict; that the defendants conspired and retaliated against him for filing grievances after the first disciplinary charge was lodged against him; and that his substitute counsel was ineffective. Young also alleged that when the defendants retaliated against him, he was denied equal protection of the laws based on his race and that the defendants violated TDCJ regulations prohibiting discrimination based on sex, race, or color.

The parties filed cross motions for summary judgment. The magistrate judge recommended granting summary judgment for the defendants after he determined that Young had not been denied due process of law in the disciplinary hearings, that Young had made only conclusional allegations that the defendants conspired against him, that Young's complaints against Defendant Garner failed because supervisory officials cannot be held liable in a § 1983 action under the theory of respondeat superior, and that the defendants were entitled to absolute immunity from Young's claims against them in their official capacities and to qualified immunity from his claims against them in their individual capacities. The district court followed the magistrate judge's recommendation and granted summary judgment for the defendants.

II.

Young has submitted a twenty-one page, hand-written, largely unintelligible brief, along with an eighteen-page motion for summary judgment, which is also hand-written and largely unintelligible. Young challenges the district court's summary judgment for the defendants on a number of grounds.

This court reviews a grant of summary judgment de novo. **Reese v. Anderson**, 926 F.2d 494, 498 (5th Cir. 1991). In reviewing a district court's ruling on a motion for summary judgment, this court applies the same standards that govern the district court's determination. **King v. Chide**, 974 F.2d 653, 655 (5th Cir. 1992). This court views the evidence and any inferences in the light most favorable to the party opposing the motion. **Id**. at 656.

When, as here, the defendants assert a qualified-immunity defense, "the first inquiry in the examination of a defendant's claim of qualified immunity is whether the plaintiff `allege[d] the violation of a clearly established constitutional right.'" **Duckett v. City of Cedar Park**, 950 F.2d 272, 276-77 (5th Cir. 1992) (quoting **Siegert v. Gilley**, 500 U.S. 226, ___, 111 S.Ct. 1789, 1793, 114 L.Ed.2d 277 (1991)). If this court finds no constitutional injury, it is "unnecessary to address the issue of qualified immunity." **Quives v. Campbell**, 934 F.2d 668, 671 (5th Cir. 1991).

Young's allegations of constitutional injury emanate from the disciplinary hearings following the July 4, 1991, fight between white and black inmates and his subsequent administrative segregation. Placement of an inmate in administrative segregation does not automatically trigger due process protection. **Hewitt v. Helms**, 459 U.S. 460, 468, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983). There is no substantive due process right to avoid administrative segregation; however, placement without adequate procedural safeguards may violate due process if the state has created a protected liberty interest. Such an interest will only be created if the specific rule establishes mandatory discretion-limiting standards. **Olim v. Wakinekona**, 461 U.S. 238, 249, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983). Arguably, inmates in Texas prisons have a protected liberty interest in not being confined to administrative segregation.

Assuming arguendo that Young has a protected liberty interest

in not being confined in administrative segregation, the process due an inmate facing such restrictive requirement "requires only that prison officials engage in an `informal, nonadversary review' of the evidence surrounding an inmate's restrictive confinement, and that the inmate 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." **McCrae v. Hankins**, 720 F.2d 863, 868 (5th Cir. 1983) (citing **Hewitt**, 459 U.S. at 473). A written statement by the inmate satisfies the latter requirement and he need not be afforded the opportunity to present witnesses or evidence other than his own statement. We now turn to Young's specific arguments.

III.

A.

Young asserts first that the description of the offense failed to provide him adequate notice of the charges against him and did not provide him with the names of the inmates whom he allegedly assaulted. As noted above, due process requires only that Young was given "some notice" of the charges against him. **McRae**, 720 F.2d at 868.

The summary judgment evidence indicates the following. Young's substitute counsel, Jose Colon, gave Young notice of the disciplinary hearing on July 10, 1991. Young submitted, in support of his motion for summary judgment, handwritten duplicates of the

notices he received.[2] Young apparently was not prosecuted on these charges and they were dropped.

On July 11, 1991, Colon served Young with a second notice of a disciplinary charge.[3] A hearing was conducted on July 19, 1991, after which Young was convicted and punished. Young appealed the decision and on August 22, 1991, the case was overturned with the Unit being given the opportunity to retry it.

On September 11, 1991, Colon served Young a third notice of disciplinary charges (No. 920005248). Although the form indicated that the offense date was "08/22/91," the offense date was an obvious error in that the conviction in No. 910101258 was

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[2] The first notice charged Young with the following:

> On [07/04/91 at 11:45 AM] . . . Inmate Young, Charles, . . . did assault inmates Moss Rickey. . . . and Bell, Donald . . . and Dougherty, Douglas . . . without a weapon. Inmate Young did encourage other inmates to engage in a disturbance by soliciting assistance from other inmates to assault inmates Moss, Bell, and Dougherty and such encouragement was likely to cause a riot. Inmate Young did assault inmates Moss, Bell, and Dougherty which resulted in a disruption of operations in that such act caused all operations on 8 Bldg. to be suspended and the entire building being placed in their assigned cell. . .

[3] This charge (No. 910101258) stated:

> On [07/04/91 at 11:45 AM] . . . Inmate Young, Charles, . . . intentionally participated with at least 20 other black inmates in fighting against white inmates in the dayroom and created a danger of injury to persons and substantially obstructed the performance of unit operations.

overturned on that date and the offense description duplicated the description of the offense in No. 910101258. The notices gave Young "some notice" of the charges against him and met due process requirements.

B.

Young contends next that he was not permitted to confront the witnesses whom he is accused of assaulting. He also argues that he could not call witnesses on his behalf because he was in administrative segregation and not permitted to interview them. As discussed above, due process does not require that Young be afforded the opportunity to present witnesses, but only that he be given the opportunity to present his views to the prison officials. **See McRae**, 720 F.2d at 868.

The transcript of the disciplinary hearing reveals that Young was given the opportunity to make a statement to prison officials. Even though not required by due process, the transcript also indicates that Young was provided an opportunity to call witnesses, but that he requested only the presence of the accusing officer. Therefore, Young was provided the requisite due process to present his views to prison officials.

C.

Young argues next that, based on Officer Trevino's testimony, the guilty verdict at the disciplinary hearing was not supported by sufficient evidence. Federal review of the sufficiency of the evidence of prison disciplinary findings is limited to determining whether the findings are supported by any evidence at all. **Stewart**

v. Thigpen, 730 F.2d 1002, 1005-06 (5th Cir. 1984). Officer Trevino testified that on the date of the fight between the inmates, he saw Young in the dayroom in the area where all the other inmates were kicking inmate Dougherty. When asked whether he saw Young participating, Trevino responded: "Like I said, he was just right there in that corner with them, I couldn't see him leave but he was right there in that corner." Trevino discounted that there was any chance that he could have mistaken Young with anybody. Accordingly, some evidence existed that supports the disciplinary committee's finding.

D.

Young argues next that he was denied the right to a fair and impartial decision maker solely because Defendant Parker was involved in all three reports as the reviewing officer. An official's involvement in more than one disciplinary report alone does not render him impartial. This allegation lacks merit.

E.

Young argues next that the defendants conspired when they retaliated against him for filing a grievance. To prevail on his retaliation claim, Young has to show that the defendants harassed him because of his reasonable attempt to exercise his right of access to the courts. **Gibbs v. King**, 779 F.2d 1040, 1046 (5th Cir.), **cert. denied**, 476 U.S. 1117 (1986).

Young acknowledged that he was in the day room on the date that a fight broke out between white and black inmates. The defendants's summary judgment materials indicate that the

disciplinary actions were not motivated by anything other than the events surrounding the July 4 fight between black and white inmates. Because the defendants met their burden to show the absence of a genuine issue of material fact as to this allegation, Young was required to produce evidence to show the existence of a genuine issue for trial. **See Celotex**, 477 U.S. at 325. Young has not met this burden.

F.

Young asserts that the defendants violated their own procedural regulations. Procedural rules governing administrative proceedings, such as disciplinary proceedings in state prisons, do not amount to constitutional doctrine. **Jackson v. Cain**, 864 F.2d 1235, 1251-52 (5th Cir. 1989). Because no issue of material fact exists regarding the disciplinary proceedings, the defendants are entitled to summary judgment as a matter of law.

G.

Young argues finally that the district court erred when it granted summary judgment for the defendants based on the affidavit of an uninvolved person, R.H. Moore, whose testimony was not based on personal knowledge, but on hearsay. Young apparently is referring to exhibit A of the defendants's motion for summary judgment, which is an affidavit by R.H. Moore, Vice-Chairman of the State Classification Committee for the TDCJ. In the affidavit, Moore certifies that the attached documents are copies of the original records in his custody.

Moore's affidavit is in compliance with Fed. R. Civ. P. 56(e).

Young apparently believes that Moore must have personal knowledge of the events surrounding his lawsuit. Young's argument that Moore's affidavit is not supported by personal knowledge is meritless.

IV.

Young filed a motion for summary judgment with this court. Such a motion is appropriate in the district court only and must be denied.

AFFIRMED.

Motion DENIED.