UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-30635

(Summary Calendar)

JOHN F. CHAMBERS,

Plaintiff-Appellant,

versus

RICHARD STALDER, Warden,
Wade Correctional Center,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-2356-M)

(July 14, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

John Chambers, an inmate of the Washington Correctional Institute ("WCI") in Angie, Louisiana, appeals from the district court's dismissal of his pro se, in forma pauperis civil rights suit. We affirm.

I

Chambers filed a complaint under 42 U.S.C. § 1983 (1988),

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* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

alleging that prison guard Charles Freeman had assigned him work duties that were outside the scope of his duty classification. Chambers further claims that after Freeman discovered that he was planning to file a grievance regarding his assigned duties, Freeman threatened Chambers with "reprisals,"[1] and falsely reported that Chambers had violated prison rules by failing to be present for roll call prior to beginning his work duties. Finally, Chambers claims that in conducting the disciplinary hearing that resulted from Freeman's report, prison officials violated his due process rights by not allowing him to call witnesses or present evidence.

The district court, adopting the report and recommendation of a magistrate judge, dismissed all of Chambers' claims as frivolous under 28 U.S.C. § 1915(d) (1988). We reversed the district court's judgment on Chambers' retaliation and due process claims, holding that they were not legally frivolous, and remanded these claims to another magistrate judge.[2] After an evidentiary hearing, Chambers filed a motion for summary judgment. The magistrate judge, however, dismissed Chambers' action and denied his motion as moot.

Chambers appeals, claiming that the magistrate judge erroneously (1) refused to grant his motion for summary judgment,[3]

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[1] Chambers alleges that Freeman told him and another inmate: "You think you're lawyers, I've got something for you."

[2] The parties consented to having a magistrate judge enter judgment on remand.

[3] The magistrate judge correctly concluded that Chambers' motion for summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure was moot upon entry of final judgment. *See Kelly v. City of Leesville*, 897 F.2d 172, 174-75 (5th Cir. 1990) (affirming denial of motion for summary judgment on grounds that motion was moot because district court had already entered judgment on other grounds).

(2) failed to rule on his motion to compel discovery, (3) found that Freeman did not file the disciplinary report on Chambers in retaliation for Chambers' having filed a grievance protesting the work duties that Freeman had assigned him, and (4) held that Chambers had received due process at his disciplinary hearing even though he was not allowed to call witnesses or present evidence.[4]

II

A

Chambers complains that the magistrate judge erred in refusing to grant his motion to compel discovery of certain documents that Chambers believed supported his claim. We will not reverse such an error unless it has prejudiced the appellant's substantial rights. *See United States v. Butler*, 988 F.2d 537, 543 (5th Cir.) (stating that district court's refusal to grant appellant's motion to compel government to produce drug sample for testing would be harmless if record showed that refusal did not affect appellant's substantial rights), *cert. denied*, ___ U.S. ___, 114 S. Ct. 413, 126 L. Ed. 2d

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In his reply brief, Chambers makes a new request for summary judgment. We do not address his new claim for relief because "any issue raised for the first time in the reply brief is waived." *United States v. Heacock*, 31 F.3d 249, 259 n.18 (5th Cir. 1994).

[4] We address the majority of the claims that Chambers raises in his eleven points of error, *see infra* parts II.A-C, but do not consider those that so completely fail to comply with Federal Rule of Appellate Procedure 28(a)(6), *see* F.R.A.P. 28(a)(6) ("The argument must contain the contentions of the appellant on the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on."), that it would be unfair to the Government for us to do so, *see United States v. Wilkes*, 20 F.3d 651, 653 (5th Cir. 1994) ("We note at the outset that while we construe *pro se* pleadings liberally, *pro se* litigants, like all other parties, must abide by the Federal Rules of Appellate Procedure."); *see also United States v. Pierce*, 959 F.2d 1297, 1300-01 n.5 (5th Cir.) (treating as abandoned claims that pro se appellant did not present in compliance with Federal Rules of Appellate Procedure because to consider them would be "patently unfair" to Government), *cert. denied*, ___ U.S. ___, 113 S. Ct. 621, 121 L. Ed. 2d 554 (1992).

359 (1993).

The record shows that Chambers was not prejudiced by the magistrate judge's refusal to grant his motion to compel discovery of the documents. The magistrate judge allowed Chambers to explain at the evidentiary hearing what these documents were and how they supported his claim. After the hearing, as Chambers notes in his brief on appeal, opposing counsel provided the magistrate judge with copies of the documents. Thus, the magistrate judge had ample time in which to consider the evidence and Chambers' explanation of its significance before dismissing Chambers' claims.[5] Consequently, Chambers cannot show prejudice from the magistrate judge's refusal to grant his motion to compel, and any error that resulted was harmless. *See Sullivan v. Rowan Cos.*, 952 F.2d 141, 146 (5th Cir. 1992) (holding that any error from district court's exclusion of evidence was harmless where same evidence was introduced in another form at trial); *Peters v. Five Star Marine Serv.*, 898 F.2d 448, 450 (5th Cir. 1990) (holding that district court's exclusion of accident report was harmless where all information contained in report was available to party seeking its admission through cross-examination of trial witnesses).

B

Chambers next argues that the magistrate judge erroneously found that Freeman did not file the disciplinary report on Chambers

[5] The magistrate judge later amended his order dismissing Chambers' claims, although his holding remained the same, in part because Chambers had complained that the original findings did not sufficiently account for evidence including that which formed the basis for Chambers' motion to compel. Thus, the magistrate judge had two opportunities to consider the evidence.

in retaliation for Chambers' having filed a grievance protesting the work duties that Freeman had assigned him. "Findings of fact . . . shall not be set aside unless clearly erroneous." Fed. R. Civ. P. 52(a). If the magistrate judge's factual findings are "plausible in light of the record viewed in its entirety," then the findings are not clearly erroneous and we may not reverse the judgment. *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-74, 105 S. Ct. 1504, 1511, 84 L. Ed. 2d 518 (1985).

Chambers, who was required while on light work duty to attend two roll calls, claims that Freeman reported him for being late to the second roll call even though Freeman knew that Chambers had been unavoidably delayed.[6] However, the magistrate judge's finding is supported by Freeman's testimony at trial that he was not aware at the time of the roll call that Chambers either had or planned to file a grievance against him. Accordingly, we find that the magistrate judge's conclusion that Chambers was disciplined for not being present for roll call in violation of prison rules, and not in retaliation for his use of the prison grievance system, is plausible under the record.

C

Finally, Chambers contends that the magistrate judge erroneously held that he received due process at his disciplinary

[6] WCI uses roll calls as part of a tracking system to account for the inmates. Chambers was required to respond to a roll call at the prison work gate along with the other inmates assigned to regular prison work duties. Normally, this would be an inmate's only roll call, but because Chambers was temporarily assigned to light work duties, he was required to report to Freeman for a second roll call in order to receive his work assignment.

hearing even though he was not allowed to call witnesses or present evidence. The magistrate judge concluded that Chambers had no due process interest in calling witnesses or presenting evidence at the hearing because Chambers did not lose good time credit as a result of the proceedings.

In *Sandin v. Conner*, No. 93-1911, 1995 WL 360217 (U.S. June 19, 1995), the Supreme Court reaffirmed its holding in *Wolff v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974), that

> the Due Process Clause itself does not create a liberty interest in credit for good behavior, but that [a state statute providing for mandatory sentence reduction for good behavior] create[s] a liberty interest in a `shortened prison sentence' which result[s] from good time credits, credits which [a]re revocable only if the prisoner [i]s guilty of serious misconduct.

Sandin, 1995 WL 360217, at *3 (citing *Wolff*, 418 U.S. at 563-66, 94 S. Ct. 2978-79). An inmate facing revocation of such credits "should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." *Wolff*, 418 U.S. at 566, 94 S. Ct. at 2979. In *Murphy v. Collins*, 26 F.3d 541 (5th Cir. 1994), however, we held that an inmate who has not actually been penalized by solitary confinement or loss of good time credit as a result of his disciplinary hearing has no claim to that degree of due process. *Id.* at 543.[7] Thus, because

[7] Although it conceded that dicta in *Wolff* "impl[ies] that solitary confinement automatically triggers due process protection," *see Sandin*, 1995 WL 360217, at *7, the Court in *Sandin* noted that "this Court has not had the opportunity to address in an argued case the question whether disciplinary confinement of inmates itself implicates constitutional liberty interests." *Id.*

Chambers' punishment did not involve the loss of good time credits, the district court properly held that he received due process at his disciplinary hearing even though he was not allowed to call witnesses or present evidence.[8]

III

For the foregoing reasons, we AFFIRM the district court's dismissal of Chambers' claims.

[8] Chambers also argues that the district court erred in not addressing whether prison officials violated their own procedural rules. "A state's failure to follow its own procedural regulations does not establish a violation of due process, because `constitutional minima may nevertheless have been met.'" *Jackson*, 864 F.2d at 1251 (quoting *Brown v. Texas A&M Univ.*, 804 F.2d 327, 335 (5th Cir. 1986)). "Moreover, where a liberty or property interest is infringed, the process which is due under the United States Constitution is that measured by the due process clause, not that called for by state regulations." *Giovanni v. Lynn*, 48 F.3d 908, 912 (5th Cir. 1995).