

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-50751  
Summary Calendar

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ALVIN LEE HARRISON,

Plaintiff-Appellant,

VERSUS

DOUGLAS DRETKE, Asst. Warden, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
(W 92 CV 113)

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September 6, 1995

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:<sup>1</sup>

Harrison appeals the district court's dismissal of his § 1983 action against prison officials pursuant to a motion for summary judgment. We affirm.

Harrison complains the administrative segregation classification committee violated due process by imposing handcuff and container restrictions without adequate procedure. He also alleges responses by both the disciplinary committee and the

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<sup>1</sup> 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

classification committee to the same infraction subjected him to double jeopardy.

The district court initially dismissed Harrison's suit following a Spears hearing pursuant to § 1915(d). We remanded for further development. The defendants filed a motion for summary judgment and Harrison responded. The court granted the motion under the due process analysis developed in Hewitt v. Helms, 459 U.S. 460 (1983). We affirm under a new analysis announced by the Supreme Court in Sandin v. Conner, 115 S. Ct. 2293 (1995).

Harrison's complaints stem from the response of prison administrators to his infractions of failure to obey, throwing an unknown liquid, and failure to groom. Administrative directives at the Hughes facility establish two committees to deal with such infractions. The disciplinary committee decides the primary disciplinary action that will be taken. Actions by this committee occur after notice and hearing in which the inmate fully participates. This committee's actions are not being contested by Harrison.

The classification committee, on the other hand, deals with administration of the unit. This committee initially decides to place the inmate in administrative segregation and then meets periodically to review this status. For the periodic review, the inmate is given 24 hour notice and may appear and present evidence. This committee also determines the restraints and conditions to place on an inmate in administrative segregation. In response to an infraction, the committee will quickly meet to adjust the

conditions for security and orderliness of the unit. It is the action of this ad hoc meeting of the classification committee that is being challenged. Harrison alleges the classification committee violated due process when placing him on handcuff restraint and container restriction without opportunity to challenge the evidence.

The Supreme Court in Conner re-evaluated "circumstances under which state prison regulations afford inmates a liberty interest protected by the Due Process Clause." Conner, 115 S. Ct. at 2295. The Court rejected the Hewitt approach (basing the inquiry on the language of the state regulation in question) in favor of examining the nature of the deprivation. The new inquiry is whether the deprivation "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Id. at 2300. Also, the Court was concerned whether the "State's action will inevitably affect the duration of his sentence" without procedural protections. Id. at 2302. The Court recognized "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law." Id. at 2301. In Conner, discipline in segregated confinement was not an infringement on a protected liberty interests that would implicate due process concerns.

Based on this analysis, Harrison's allegations of restraint and container restrictions are not deprivations that "impose atypical and significant hardship . . . in relation to the ordinary incidents of prison life." Plus, since the classification

committee is only concerned with administration of the unit, the committee's action will not affect Harrison's parole status without the procedural safeguards of the disciplinary committee. Thus, due process concerns are not implicated.

Equally unavailing is Harrison's assertion of a violation of the Double Jeopardy Clause. The Fifth Amendment's Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction and against multiple punishments for the same offense. Fransaw v. Lynaugh, 810 F.2d 518, 523 (5th Cir.), cert. denied, 483 U.S. 1008 (1987). "The risk against which double jeopardy protects is not present in proceedings that are not 'essentially criminal.'" Showery v. Samaniego, 814 F.2d 200, 202 (5th Cir. 1987). "Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Therefore, the Double Jeopardy Clause does not apply. The district court did not err in granting the defendants' motion for summary judgment.<sup>2</sup>

AFFIRMED.

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<sup>2</sup> Harrison also argues that the district court erred in denying his motion to transfer records of the hearing on January 19, 1994. The argument is meritless. The exhibits are part of the record, and the court staff routinely transcribes the tapes of hearings in § 1983 cases.