

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60734  
Summary Calendar

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Charles A. Grayer,  
Plaintiff/Appellant,  
versus  
Eddie Lucas, et al.,  
Defendants/Appellees.

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Appeal from the United States District Court  
For the Northern District of Mississippi  
(4:91-CV-251-S-0)

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(May 22, 1995)

Before JOHNSON, JONES, and EMILIO M. GARZA, Circuit Judges.\*

JOHNSON, Circuit Judge:

Mississippi state prisoner filed suit *pro se* and *in forma pauperis* against three prison officials alleging that his due process rights were violated when he spent thirty days in administrative segregation. After a *Spears*<sup>1</sup> hearing, the district court dismissed as frivolous the claims against two of the defendants. The claims against the remaining defendant were dismissed when the district court adopted the findings of the magistrate judge made after a non-jury

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

<sup>1</sup> *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

trial. Prisoner appeals. Finding no reversible error, we AFFIRM.

#### I. FACTS AND PROCEDURAL HISTORY

Charles A. Grayer is incarcerated in the Mississippi Department of Corrections (MDOC). Grayer worked as the manager of the Unit 29-I building canteen. On September 3, 1991, personnel from the main canteen conducted an inventory and found a cash shortage. The canteen was closed. The next day, September 4, 1991, one of the officers at Grayer's unit applied for Grayer to be segregated pending investigation and thus Grayer was placed in administrative segregation.

Grayer had a "72-hour hearing" on September 6, 1991, at which time a review committee determined that he should remain in segregation pending investigation of the alleged cash shortage. Following this hearing, on September 7, 1991, a rules violation report (RVR) was issued charging Grayer with stealing from the canteen.

A disciplinary hearing was held on September 20, 1991, after which the charge against Grayer was dropped for lack of evidence. Grayer was not immediately released<sup>2</sup> from segregation, however. Instead, prison authorities conducted a classification hearing to determine his custody status on September 23rd. The classification committee, which included Henry Johns, recommended that Grayer be returned to the general population. However, Lucas, the official with

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<sup>2</sup> Grayer testified that on September 20, the day the charges were dropped, he wrote to defendant Eddie Lucas, the Director of Classification at the prison, asking to be returned to the general population. He wrote to Lucas again on September 23. Also on or about September 23, Grayer sent letters to defendant Henry Johns, a case manager at the prison, and defendant Earl Jackson, a case manager supervisor at the prison, seeking to be released back into the general population.

the final authority for returning a prisoner being held in administrative segregation to the general population, did not sign his approval of the committee's recommendation until October 3, 1991. Grayer was released from administrative segregation into the general population on October 4, 1991.

Proceeding *pro se* and *in forma pauperis*, Grayer filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against three prison officials--Eddie Lucas, Henry Johns and Earl Jackson. In the action, Grayer complained that his initial placement into administrative segregation was improper and that it should not have taken ten days to release him from administrative segregation once the classification committee determined that he should have been returned to the general population.

A *Spears* hearing was held before a magistrate judge on June 1, 1992. After this hearing, the magistrate judge recommended that the claims against Johns and Jackson be dismissed as frivolous pursuant to 42 U.S.C. § 1915(d). However, the magistrate judge found that the ten-day delay between the classification committee's determination that Grayer be returned to the general population and Lucas taking action to release Grayer was not adequately explained. Accordingly, the magistrate judge recommended that the due-process claim against Lucas go forward. The district court adopted these recommendations.

The magistrate judge then held what he termed a non-jury trial, pursuant the provisions of 28 U.S.C. § 636(b)(1)(B), on Grayer's claim against Lucas. After this trial, the magistrate judge concluded that Grayer did not have a constitutional right to be returned to the

general prison population within any particular time after he was cleared of his disciplinary charge. Moreover, although the magistrate judge stated that a prisoner could not be held in segregation indefinitely without violating his constitutional rights, the magistrate judge concluded that ten days was not so long a time as to constitute such a violation.

Grayer filed objections to the magistrate judge's report and recommendation arguing that MDOC policy provides that no inmate who is placed in administrative segregation solely to await investigation of a serious violation of institutional rules be held for more than twenty days without either the investigation being completed and an RVR being issued or the prisoner being released back into the general population. The district court overruled this objection finding that the prison authorities had complied with this policy. In the court's view, the investigation, the issuance of the RVR, and the hearing were held within twenty days of Grayer's being placed in administrative segregation. The ten-day delay in returning Grayer to the general population, the court explained, occurred not in completing the investigation, but in transmitting the recommendation to Lucas and in his reviewing it. Accordingly, the district court adopted the magistrate judge's recommendation and dismissed Grayer's suit with prejudice. Grayer now appeals.

## II. DISCUSSION

### A. Standard of Review

This Court reviews the factual findings of the district court for clear error. Fed. R. Civ. P. 52(a). If the district court's findings

are plausible in light of the record viewed in its entirety, the reviewing court must accept them, even though it might have weighed the evidence differently if it had been sitting as a trier of fact. *Price v. Austin Independent School Dist.*, 945 F.2d 1307, 1312 (5th Cir. 1991). The district court's legal conclusions are reviewed *de novo*. *Id.*

B. Due Process and Administrative Segregation

There is no liberty interest arising under the Due Process Clause to protect a prisoner from being transferred to administrative segregation to await disciplinary hearings. *Hewitt v. Helms*, 459 U.S. 460, 468, 103 S.Ct. 864, 869 (1983). A state, however, may by statute or through prison rules and regulations create a protected liberty interest in remaining in the general population. *Id.*; *Mitchell v. Sheriff Dept., Lubbock County*, 995 F.2d 60, 63 (5th Cir. 1993). When such state enactments combine explicitly mandatory language with specific substantive predicates, absent which administrative segregation will not occur, a liberty interest protected by the Due Process Clause arises. *Hewitt*, 103 S.Ct. at 871.

In this appeal, Grayer argues that the state of Mississippi has created such a liberty interest. In support, he relies on a portion of an order from *Gates v. Collier*, No. GC 71-6-S-D (N.D. Miss. Dec. 30, 1985), which provides as follows:

That no inmate who is placed in administrative detention solely to await the investigation of a serious violation of institutional rules or regulations for which he has not been charged be held for a period in excess of 20 days from the date of initial placement without either the investigation being completed and an RVR being issued or the inmate's being released back to the general prison population.

Grayer contends that this order, the substance of which is repeated in an official MDOC memorandum that is in evidence and that was written by Lucas, was sufficient to create a liberty interest protecting him from being held in administrative segregation longer than twenty days. As he was in administrative segregation for thirty days, Grayer concludes that his due process rights have been violated.

We need not decide today whether the state of Mississippi has created a liberty interest in the above-quoted policy. This is because in this case, the district court concluded that the prison officials had complied with this policy and we cannot conclude that that finding is clearly erroneous. Thus, even if a protected liberty interest was created by the policy, there was no due process violation.

The obvious purpose behind this policy is to ensure that prisoners, who have not been charged, do not languish in administrative segregation while an investigation goes on interminably. Instead, there must be a resolution of the investigation within twenty days or the prisoner must be released back into the general population. In this case, the district court found that the former occurred. Grayer was placed in administrative segregation on September 4th. An RVR was issued charging him on September 7th. A disciplinary acquitted Grayer on September 20th and a classification committee determined that he should be returned to the general population on September 23rd. All of these actions took place within the twenty-day timeframe. Moreover, the district court concluded that these actions completed the investigation which

terminated in Grayer's favor.<sup>3</sup> We cannot say that the district court clearly erred in finding that these actions completed the investigation. Thus, the district court was correct when it concluded that twenty-day policy had been met.

The remaining time that Grayer spent in administrative segregation was not caused by any ongoing investigation. Rather, that delay represented the time it took to forward the classification committee's recommendation through the proper channels to Lucas and for him to review it. This period of delay was ten days. Our review of the record shows that a delay of ten days for papers to be in process or transit at Parchman Penitentiary, which houses over 5,000 inmates, is not unusual. Further, like the district court, we conclude that this delay of ten days, which included one intervening weekend, is not so long as to be presumptively prejudicial and therefore unconstitutional.

Accordingly, we find no violation of Grayer's due process rights.

### III. CONCLUSION

For the reasons stated above, the judgment of the district court is AFFIRMED.

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<sup>3</sup> In his brief on appeal, Grayer argues that the investigation had not completed because more investigation was done in November of 1991. However, Grayer did not argue this before the district court and no testimony in the record supports this assertion.