IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60177

Summary Calendar

RODERICK J. GRABOWSKI

Plaintiff-Appellant,

v.

EDDIE LUCAS, Commissioner,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
(92 CV 230)

(November 11, 1994)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

Roderick J. Grabowski ("Grabowski"), proceeding pro se and in forma pauperis, filed this 42 U.S.C. § 1983 complaint, alleging that on two occasions prison officials kept him in punitive isolation confinement too long in violation his Eighth and Fourteenth Amendment rights. Grabowski named as defendants

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Eddie Lucas, the director of classification, and John Newsome, a prison case manager ("defendants"). After adopting the findings and recommendation of the magistrate judge, the district court entered judgment for the defendants. Grabowski appeals. We affirm.

I. FACTS AND PROCEDURAL HISTORY

In his § 1983 complaint, Grabowski alleges that on two occasions prison officials kept him in punitive isolation confinement for longer than his sentences for prison rules violations. Grabowski generally was confined in the general population Unit 29 with a class "B" custodial status. Prison officials transferred Grabowski to Unit 32, a maximum security unit, on two different occasions. The first period of confinement ("first confinement") began on February 21, 1991 and ended May 15, 1991; the second ("second confinement") began on May 22 and ended September 26.

On February 21, prison officials placed Grabowski in administrative segregation in Unit 32 pending a disciplinary hearing for receiving a Rule Violation Report ("RVR"). Preliminary hearings were held on February 22 and March 4; during the hearings, prison officials decided to continue administrative segregation pending the disciplinary hearing. On March 11, the disciplinary hearing occurred and Grabowski was found guilty of the rules violation. His status was reduced from "B" to "C" and Grabowski was sentenced to twenty days in punitive isolation in Unit 32. On March 26, another hearing was held, during which

prison officials recommended that Grabowski be placed back in the general population Unit 29. When Grabowski learned of this, he requested not to be transferred back to Unit 29 because of some problems he previously had with gang members in Unit 29. Pending investigation of his request, Grabowski remained in Unit 32 until May 15, at which time he was transferred back to Unit 29. Grabowski claims that he was supposed to be in Unit 32 for twenty days only and that he was kept there eighty-five days total, sixty-five days extra.

On May 22, only a week after returning to Unit 29, Grabowski received four more RVRs and was transferred back to Unit 32 administrative segregation pending a disciplinary hearing. On May 23 and 29, two more hearings were conducted; again, prison officials decided to continue administrative segregation pending the disciplinary hearing. After the disciplinary hearing, Grabowski was found guilty of all four rules violations and sentenced to serve twenty days for each one, beginning on June 24. Grabowski remained in Unit 32 until September 26, but twenty-five of those days he was in a prison hospital. Grabowski maintains that he was in isolation at the hospital and he was only supposed to be in isolation the second time for twenty days total. He claims he was held for 130 days during the second confinement, 110 days over the sentenced time period, amounting to 175 total days of unlawful confinement between the first and second confinement.

Following a Spears[1] hearing, the magistrate judge directed the clerk to serve the defendants with the complaint. The magistrate judge conducted an evidentiary hearing[2] pursuant to 28 U.S.C. § 636(b)(1)(B) and submitted a report to the district judge recommending that judgment be entered for the defendants.

The magistrate judge found Grabowski was in administrative segregation, not punitive isolation, during the times he was awaiting his disciplinary hearing, so those days did not count towards his punishment time. The magistrate also found no deliberate indifference in either the first or second confinement, since Grabowski was never placed in isolation because no empty isolation cells were available. Because he was never actually in punitive isolation, the magistrate concluded that the move to Unit 32 was merely a change in housing, which does not impinge any protected liberty interest.

The district court conducted a de novo review of the record, including Grabowski's objections to the recommendation, and adopted the factual findings and legal determination of the magistrate judge. The trial court then dismissed the complaint with prejudice and entered judgment for the defendants.

Grabowski argues on appeal that the trial court erred in determining that he was serving administrative segregation, as

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[1] Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

[2] Although the magistrate judge and the district court referred to the hearing as a nonjury trial, it was an evidentiary hearing because the magistrate judge was required to file a report and recommendation following the hearing. See 28 U.S.C. § 636(b)(1)(B).

opposed to punitive isolation, while awaiting each of his disciplinary hearings because he suffered a loss in privileges.[3] Grabowski also contends, on the same grounds, that the court erred in its conclusion that he was never in isolation. Finally, Grabowski claims that the time he was in the hospital should also count as days in punitive isolation.

II. STANDARD OF REVIEW

We review a district court's factual findings for clear error only. FED. R. CIV. P. 52(a). A district court's finding is clearly erroneous "only when the reviewing court is left with the `definite and firm conviction that a mistake has been committed.'" United States v. Ornelas-Rodriguez, 12 F.3d 1339, 1347 (5th Cir.), (quoting Anderson v. City of Bessemer City, 470 U.S. 564, 573 (1985), cert. denied, 114 S. Ct. 2713 (1994). We must view the evidence in the light most favorable to the party prevailing in district court. United States v. Cardenas, 9 F.3d 1139, 1147 (5th Cir. 1993), cert. denied, 114 S. Ct. 2150 (1994).

As we have previously noted, "[i]f the district court's findings are plausible in light of the record viewed in its entirety, we must accept them, even though we might have weighed the evidence differently if we had been sitting as a trier of fact." Price v. Austin Indep. School Dist., 945 F.2d 1307, 1312 (5th Cir. 1991) (quoting Norris v. Hartmarx Specialty Stores,

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[3] Grabowski does not argue that being placed in administrative segregation is in any way improper. He only contends that he was never placed in administrative segregation at all, but rather all of his time was in punitive isolation.

Inc., 913 F.2d 253, 255 (5th Cir. 1990)). Great deference is given to a district court's determinations when they are based on credibility findings, and we "must apply the clear error standard with particular care in cases involving demeanor testimony." Id. (citations omitted).

III. APPLICABLE LAW

In evaluating actions of prison officials, we must accord "the widest possible deference" to procedures designed to maintain prison security. McCord v. Maggio, 910 F.2d 1248, 1251 (5th Cir. 1990). Prison officials have broad discretionary authority over prisons, and prisoners retain only a narrow range of liberty interests protected by the Fourteenth Amendment. Hewitt v. Helms, 459 U.S. 460, 467 (1983). This discretion includes decisions by prison officials concerning classification of prisoners by custodial status. McCord, 910 F.2d at 1250.

The case law is well-settled that as a general rule, "an inmate has no right to a particular classification." Id. at 1251; see also MISS. CODE ANN. § 47-5-99 to 47-5-104 (1981) (granting discretion to a classification committee to assign classifications to inmates, after considering several criteria, in order to "serve and enhance the best interests and general welfare of the offender"). As an inmate, the transfer to less amenable and more restrictive quarters for nonpunitive purposes "is well within the terms of confinement ordinarily contemplated by a prison sentence." Hewitt, 459 U.S. at 468. The Supreme Court has specifically held that an inmate has no liberty

interest under the Due Process Clause in being confined in a general population cell as opposed to administrative segregation. Id. at 466-67.

However, confinement "in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards." Hutto v. Finney, 437 U.S. 678, 685 (1978). While punitive isolation is not unconstitutional per se, it may be determined to be unconstitutional, "depending on the duration of the confinement and the conditions thereof." Id. at 685-686. Nevertheless, the length of confinement, while important, is not the only determinant factor. Id. at 686-87.

IV. DISCUSSION

We conclude that the district court did not clearly err in determining that the defendants did not violate Grabowski's Eighth or Fourteenth Amendment rights with respect to either the first or second confinement. Viewing the evidence in the light most favorable to the defendants, the trial court could have plausibly concluded that Grabowski served no extra days in punitive isolation.

The trial court found that for both confinements, during the time between Grabowski's transfer to Unit 32 and his disciplinary hearings, Grabowski was in administrative segregation and not punitive isolation. This finding was plausible, given the defendants evidence that Grabowski was being held until the disciplinary hearing could occur. Holding a prisoner while awaiting a later classification or transfer is a paradigm example

of the purpose of administrative segregation. See Hewitt, 459 U.S. at 468 (stating that a Pennsylvania statute specifically authorizes administrative segregation "to await later classification or transfer").

Furthermore, the defendants presented evidence that Grabowski never served a single day in punitive isolation confinement the entire time he was in Unit 32 because there were no empty isolation cells available. Grabowski maintains that his privileges were reduced upon transfer to Unit 32 and therefore he was serving isolation time. While Grabowski was housed in Unit 32, he changed from "B" to "C" custody status. According to the defendant's evidence, however, "C" status has fewer privileges than "B," but more than punitive isolation status. Grabowski received all status "C" privileges while in Unit 32.

Thus, Grabowski's transfer to Unit 32 amounted to nothing more than a change in housing. Whether or not the hospital days should have counted toward his punishment time is irrelevant because the district court found that Grabowski was never punished, that is, he was never put in punitive isolation confinement. We are not left with a definite and firm conviction that the district court erred in believing the defendants' evidence and making this determination. Because Grabowski has no right to a particular housing assignment or custodial status, the district court did not clearly err in concluding that the defendants did not violate Grabowski's constitutional rights during his stay in Unit 32.

V. CONCLUSION

For the foregoing reasons, we AFFIRM the judgment of the district court.