

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

SIMON EVANS

v.

DONALD VAUGHN, SUPT. et al.

CIVIL ACTION

NO. 97-5754

Broderick, J.

March 24, 1998

MEMORANDUM

Plaintiff Simon Evans brings this pro se action alleging that Donald Vaughn, Superintendent of S.C.I. Graterford, and Martin Horn, Commissioner of the Department of Corrections, violated his civil and constitutional rights. Defendants Vaughn and Horn have filed a motion to dismiss Plaintiff's Complaint pursuant to Fed.R.Civ.P. 12(b)(6) on the grounds that Plaintiff has failed to state a claim upon which relief can be granted. Plaintiff has filed a response to Defendants' motion to dismiss.

Construing the Complaint pursuant to Haines v. Kerner, 404 U.S. 519, 520-521 (1972), the Court has determined that Plaintiff brings this action pursuant to 42 U.S.C. § 1983, alleging violations of his rights to due process under the Fourteenth Amendment, and his right to be free from cruel and unusual punishment under the Eighth Amendment. Plaintiff also makes passing reference to violations of his rights under the Sixth Amendment, but offers no facts to support such a claim. Thus, the Court will only consider Plaintiff's § 1983 claims under the

Fourteenth and Eighth Amendments. For the reasons stated below, the Court will grant the Defendants' motion to dismiss Plaintiff's Complaint.

Plaintiff's Complaint alleges the following:

Plaintiff is incarcerated at S.C.I. Graterford, serving a sentence of life imprisonment as a consequence of a murder conviction in 1972. In 1983 Plaintiff applied for and received outside clearance, which allowed him to work at Graterford's water treatment facility. Plaintiff eventually became a certified professional water/sewage treatment plant processor and administrator. In 1986, because of his good conduct and work skills, Plaintiff applied for and was granted housing in the Outside Service Unit ("OSU"), a housing unit outside Graterford's walled compound. Living in the OSU allowed Plaintiff daily contact with his wife, children and grandchildren. He also continued serving as a wastewater treatment plant operator. In addition, in 1993 Plaintiff helped found an organization called The School of Hard Knocks, which continues to offer programs designed to combat juvenile crime and the deterioration of neighborhoods.

In September 1995, after living in the OSU without incident for nine years and after twelve years of outside work clearance, Plaintiff was handcuffed and taken to a security officer who took a urine specimen. Plaintiff was then stripped of his clothing,

searched, issued a set of general prison population clothing, and taken to administrative segregation. Plaintiff remained in administrative segregation for more than two months. Although he was notified that his urine specimen was negative, he was given no explanation for his segregation, despite his many inquiries to the Captains of the Guard, deputy superintendents and the superintendent himself.

Plaintiff alleges that in December of 1995, Superintendent Vaughn communicated to Plaintiff that as a result of the public outcry surrounding the McFaddon and Robert "Mudman" Simon incidents (in which, the Court notes, violent offenders were released on parole and later committed additional violent crimes), the Commissioner of Corrections had ordered Superintendent Vaughn to reevaluate the status of prisoners serving life terms who were given clearance to live in the OSU. Superintendent Vaughn informed Plaintiff that he had lost his clearance status, and in January of 1996, Plaintiff was placed in the general prison population inside the walled compound of Graterford.

However, Plaintiff alleges that in fact there was never any review of prisoners working and/or living outside the walled compound, nor was there "a policy directive issued from either the Superintendent's office or the Commissioner of Corrections which articulated any process for re-evaluating Outside Service

Unit prisoners or ... which established a process for de-classifying a prisoner who enjoyed OSU clearance and privileges."

Plaintiff claims that he sought remedy through the prison's grievance process, to no avail. He seeks injunctive relief as well as compensatory and punitive damages.

Standard of Review

In deciding a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6), the Court accepts as true all factual allegations contained in the complaint, as well as all reasonable inferences which could be drawn therefrom, and views them in the light most favorable to the plaintiff. H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989); Zlotnick v. TIE Communications, 836 F.2d 818, 819 (3d Cir. 1988).

The Court holds the allegations of a pro se complaint to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520-521 (1972). Accordingly, the Court will allow a pro se litigant the opportunity to offer supporting evidence of his allegations unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id.

Fourteenth Amendment Claims

Plaintiff claims that his transfer from the OSU to the general prison population and his two-month confinement in administrative segregation, without due process, violated his

rights under the Fourteenth Amendment. The Fourteenth Amendment to the Constitution provides that a state shall not deprive any person of a protected liberty interest without due process of law. U.S. Const. Amend. XIV. Protected liberty interests derive from the Due Process Clause itself or from the laws of the States. Hewitt v. Helms, 459 U.S. 460, 466 (1983).

As to those liberty interests which derive from the Due Process Clause itself, it is settled law that "as long as the condition or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight." Montayne v. Haynes, 427 U.S. 236, 242, 96 S.Ct. 2543, 2547; see also Meachum v. Fano, 96 S.Ct. 2532, 2538. In Montayne and Meachum, the Supreme Court held that a duly convicted prisoner does not have a liberty interest deriving from the Due Process Clause which is infringed by the prisoner's administrative or disciplinary transfer from one prison to another where the living conditions are substantially less favorable. Montayne at 2547; Meachum at 2538.

Likewise in the instant case, Plaintiff has no Due Process Clause liberty interest in remaining in the OSU, rather than being transferred to the general prison population within the walls of Graterford where, no doubt, the living conditions are

less favorable, so long as his confinement within the walled compound is "within the sentence imposed upon him." Montayne at 2547. Plaintiff was convicted of murder and sentenced to life in prison. Although Plaintiff's laudable efforts to educate himself, learn a vocation, and serve the community earned him the right to live in the OSU, there is no question that confinement within the walled compound at Graterford is within the life sentence originally imposed on him. Thus, Plaintiff has no liberty interest in remaining in the OSU which derives directly from the Due Process Clause itself.

The Supreme Court has also held that the Due Process Clause itself does not create a liberty interest in avoiding administrative segregation. Hewitt at 460, 467-68, 103 S.Ct. 864, 869-70. Thus, Plaintiff's confinement for two months in administrative segregation did not deprive him of any protected liberty interest which derives directly from the Due Process Clause of the Fourteenth Amendment.

The Fourteenth Amendment's Due Process Clause also protects liberty interests created by state law. In his response to Defendants' motion to dismiss, Plaintiff cites Todoro v. Bowman, 872 F.2d 43, 48 (3rd Cir. 1989) for the proposition that state laws and prison regulations regarding discipline and the procedure to be followed before disciplinary action is taken can give rise to a state-created liberty interest protected by the

Fourteenth Amendment. Plaintiff claims that the decision to remove him from the OSU and to transfer him to the general prison population was punitive. Plaintiff also alleges that certain non-discretionary state laws and prison regulations require that before a prisoner is punished, he must be informed of the offense alleged against him and given an opportunity to present a defense. This regulation, Plaintiff claims, creates a liberty interest in not being punished through his removal from the OSU unless he is first given all of the process due him under the Fourteenth Amendment. Because he was not given any due process before he was punished by being removed from the OSU, Plaintiff claims that his punishment was in violation of his rights under the Fourteenth Amendment.

While Plaintiff's allegations may well have given rise to a cognizable procedural due process claim under Todoro, his allegations no longer support such a claim due to a more recent United States Supreme Court case, Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293 (1995), which modified the standard for determining the existence of a state-created liberty interest. In Sandin, a prisoner was accused of high misconduct and given a disciplinary hearing before an adjustment committee. At the hearing he was not allowed to call witnesses on his behalf. The adjustment committee determined that the prisoner was guilty of the high misconduct and he served fifteen days in disciplinary

segregation. The prisoner sought administrative review, and the deputy administrator found that the high misconduct charge was unsupported. The prisoner's disciplinary record was consequently expunged, but he had already served the fifteen days' confinement.

The prisoner claimed, and the Ninth Circuit agreed, that pursuant to a prison regulation, the adjustment committee had a mandatory duty not to impose segregation if there was not substantial evidence of misconduct. The Ninth Circuit held that the mandatory nature of this prison regulation gave the prisoner a liberty interest in being free from disciplinary segregation and that he thus had a right to all the process due him under the Fourteenth Amendment, including the right to call witnesses on his own behalf.

The Supreme Court reversed, rejecting the view that mandatory language in prison regulations is the appropriate focus in determining the existence of a state-created liberty interest. Rather, the Supreme Court reasoned, the proper focus is "the nature of the deprivation." Sandin, 515 U.S. at 481, 115 S.Ct. at 2299. Thus, the Court held that state-created liberty interests "will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause itself, nonetheless imposes atypical and significant hardship on the

inmate in relation to the ordinary incidents of prison life." Id. at 482, 115 S.Ct. at 2299. The Court determined that the prisoner's segregated confinement, although "concededly punitive ... did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest." Id. at 485-6, 115 S.Ct. at 2301. Therefore, because the prisoner had no liberty interest in being free from disciplinary segregation, he had no right to due process under the Fourteenth Amendment.

In the instant case, Plaintiff's claims are similar to those of the prisoner in Sandin. Plaintiff claims that he was punished by being removed from the OSU, and he claims that mandatory language in a prison regulation gives him a state-created liberty interest in being free of such punishment. Thus, he claims, he has a right to due process under the Fourteenth Amendment. However, under Sandin, the proper analysis in determining whether Plaintiff had a state-created liberty interest in not being punished through his removal from the OSU is to focus on "the nature of the deprivation," rather than the language of a particular regulation. Sandin at 481, 115 S.Ct. at 2299.

In so focusing, there is no doubt that Plaintiff's transfer from the OSU to the general prison population has imposed many hardships on him and his family, in relation to the life they had all become accustomed to for the many years he lived and worked

outside the walled compound. However, these hardships are not "atypical and significant ... in relation to the ordinary incidents of prison life." Id. For most prisoners, certainly those serving life sentences for murder convictions, the "ordinary incidents of prison life" include confinement in the general prison population within prison walls. See Dominique v. Weld, 73 F.3d 1156, 1161 (1st Cir 1996) ("While we may regret the disappointment and frustration inherent in [a prisoner's work release status being revoked under allegedly similar circumstances], the hardship was not 'atypical.'") Under the standard announced in Sandin, Plaintiff's transfer from the OSU did not affect any state-created liberty interest and thus did not violate his procedural due process rights under the Fourteenth Amendment.

Similarly, the Plaintiff had no state-created liberty interest in being free from administrative segregation for two months. In Griffin v. Vaughn, 112 F.3d 703 (3rd Cir. 1997), the Third Circuit applied the standard announced in Sandin, and held that a prisoner's confinement in administrative custody for as long as fifteen months did not deprive him of a liberty interest. Id. at 708. Thus it is clear that Plaintiff's confinement in administrative custody for two months did not deprive him of a liberty interest.

Eighth Amendment Claims

Plaintiff claims that his transfer from the OSU to the general prison population subjected him to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. Plaintiff alleges that his sudden and unexplained removal from the OSU was malicious, arbitrary, and punitive, leaving the impression that Plaintiff had violated an institutional rule and causing him to experience "mental violation, perturbation, anxiety and a loss of personal dignity, self-esteem and accomplishments."

The Eighth Amendment prohibits any punishment which violates civilized standards of humanity and decency. Griffin v. Vaughn, 112 F.3d 703, 709. In Griffin, the Third Circuit noted that in order to establish a violation of the Eighth Amendment, a prisoner must show that he has been deprived of "the minimal civilized measure of life's necessities" Id. (quoting Young v. Quinlan, 960 F.2d 351, 359 (3rd Cir. 1992) and held that a prisoner confined to administrative custody for fifteen months failed to make an Eighth Amendment claim because he "presented no evidence that he was denied basic human needs, such as food, clothing, shelter, sanitation, medical care and personal safety." Id.

While the Court does not doubt Plaintiff's mental anguish upon being removed from the OSU, there is nothing in his Complaint to suggest that the current conditions of his

confinement have deprived him of the minimal necessities of life. Plaintiff does not allege that he has been deprived of food, clothing, shelter, medical care, or any other basic human need which is guaranteed by the Eighth Amendment. Thus, Plaintiff's Eighth Amendment claim also fails.

For the reasons stated above, the Court will grant the Defendants' motion to dismiss Plaintiff's Complaint.

An appropriate Order follows.

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ORDER

AND NOW, this 16th day of March, 1998; Defendants Vaughn and Horn having filed a motion to dismiss Plaintiff's Complaint pursuant to Fed.R.Civ.P. 12(b)(6); Plaintiff having filed a response to the Defendants' motion to dismiss; for the reasons stated in this Court's accompanying Memorandum of March 24, 1998;

IT IS ORDERED: The motion of Defendants Vaughn and Horn to dismiss Plaintiff's Complaint is **GRANTED**.

RAYMOND J. BRODERICK, J.