NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 16, 2024*
Decided January 19, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1805

STEVEN A. JOHNSON,
Plaintiff-Appellant,

v.

D. MURRAY and TOPOLEWSKI,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Western Division.

No. 23 C 50012

Iain D. Johnston,
Judge.

* The defendants were not served with process and are not participating in the appeal. We have agreed to decide the case without oral argument because the appellant's brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

O R D E R

Jail officials may punish a pretrial detainee for violating the facility's rules, but in doing so they must afford the procedural safeguards required by the Due Process Clause. By contrast, staff may discipline convicted prisoners for rule violations without these procedural safeguards if the punishment involves no severe and atypical hardship. In this lawsuit under 42 U.S.C. § 1983, Steven Johnson alleges that while he was a pretrial detainee, sheriff's deputies at the Lee County Jail in Dixon, Illinois punished him for a rule violation without sufficient notice and an opportunity to defend himself. The district judge dismissed Johnson's amended complaint, concluding that the 10 days of segregation imposed on him did not amount to a hardship severe enough to implicate a protected liberty interest and, thus, procedural rights. Because this ruling mistakenly applied the atypical-hardship standard for convicted prisoners to a pretrial detainee, we vacate the judgment and remand the case for further proceedings.

We construe Johnson's pro se complaint liberally and assume the truth of his allegations, as supplemented by jail records he attached. *Otis v. Demarasse*, 886 F.3d 639, 644 (7th Cir. 2018). While he was a pretrial detainee, Johnson received a disciplinary report alleging a major rule violation for fighting with another detainee; the report announced that a hearing would be held at least 24 hours later. Yet less than ten hours later, Deputy D. Murray (a defendant here) convened the hearing, found Johnson guilty, and recommended 10 days' in-cell confinement with just one hour out-of-cell per day. The other defendant, Deputy Topolewski, approved this discipline despite the problematic timeline. (The complaint provides defendants' last names and badge numbers, and only the initial of Deputy Murray's first name.) Johnson alleges that he was surprised by the truncated schedule, lacked time to prepare his side of the story, and was afforded no opportunity to present evidence or argument. Whether he was present at the hearing is unclear from the complaint and attached documents.

After unsuccessfully pursuing grievances within the jail system, Johnson turned to federal court, suing the deputies for restricting his liberty without due process. The district judge screened Johnson's initial complaint under 28 U.S.C. § 1915A and dismissed it for failure to state a claim, reasoning that Johnson had not shown that the 10 days of segregation amounted to a hardship atypical of everyday life in jail. Johnson amended his complaint, but its key details remained the same. The judge again dismissed it for the same reason—this time with prejudice.

On appeal, we review challenges to a screening order de novo. *Otis*, 886 F.3d at 644. Here, drawing all reasonable inferences in Johnson's favor, as we must at this stage, we conclude that the amended complaint should have survived screening.

Johnson argues that the district judge wrongly conflated the due process standard governing discipline of pretrial detainees—which requires adequate notice and a proper hearing when imposing *any* nontrivial punishment—with the one for convicted prisoners, who may be summarily disciplined without procedural protections if the sanction involves no serious hardship atypical of ordinary prison life. *Compare Higgs v. Carver*, 286 F.3d 437, 438 (7th Cir. 2002) (pretrial detainee cannot be placed in disciplinary segregation without due process protections), *with Hardaway v. Meyerhoff*, 734 F.3d 740, 743 (7th Cir. 2013) (convicted prisoner lacks a liberty interest in avoiding segregation unless sanction amounts to "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life") (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)). Essentially, the fact of conviction reduces a prisoner's baseline interest in liberty below that of a pretrial detainee. *See Rapier v. Harris*, 172 F.3d 999, 1004–05 (7th Cir. 1999). Because pretrial detainees have not yet been convicted, "it cannot be said that they ought to expect whatever deprivation can be considered incident to serving a sentence." *Id.*; *see Bell v. Wolfish*, 441 U.S. 520, 535–36 (1979).

When discipline impinges on a detainee's recognized liberty interest, due process requires (among other things) timely notice and the right to call witnesses and present evidence. *Prude v. Meli*, 76 F.4th 648, 656–57 (7th Cir. 2023). Johnson alleges that he was denied those safeguards, so this appeal turns on his asserted liberty interest.

And his asserted liberty interest suffices at the screening stage. Although the district judge recognized that Johnson was a pretrial detainee, his ruling that Johnson's 10-days' segregation did not infringe on a protected liberty interest mistakenly relied on the atypical-hardship standard for convicted prisoners. As we explained in *Rapier*, the atypical-hardship analysis does not apply to pretrial detainees. 172 F.3d at 1004–05. So far as the complaint alleges and the disciplinary documents attached to it appear to show, the defendant deputies' express intent was to punish Johnson for a rule violation, not to segregate him for immediate safety or other administrative reasons. *Cf. Higgs*, 286 F.3d at 438 (no hearing required if pretrial detainee is placed in confinement for managerial, nonpunitive reasons). Because Johnson, as a pretrial detainee, was segregated as punishment for committing a major rule infraction, he was entitled to the procedural safeguards of due process. *See id.*; *Rapier*, 172 F.3d at 1005.

The complaint thus plausibly states a due process claim. *See Prude*, 76 F.4th at 656–57. In so holding, we express no view on what further development may reveal once the defendants have been served, any defenses they might raise, or whether 42 U.S.C. § 1997e(e) would limit recovery for this kind of non-bodily injury to nominal or punitive damages, *see, e.g.*, *Lisle v. Welborn*, 933 F.3d 705, 719 (7th Cir. 2019).

The dismissal at screening was premature. We therefore VACATE the judgment of the district court and REMAND for further proceedings consistent with this order.