

NONPRECEDENTIAL DISPOSITION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 February 26, 2024*

Decided March 1, 2024

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 23-2218

LEE A. BROWN,
Plaintiff-Appellant,

v.

EMIL TONEY, et al.,
Defendants-Appellees.

Appeal from the
United States District Court for the
Eastern District of Wisconsin.

No. 22-CV-018

William E. Duffin,
Magistrate Judge.

ORDER

Lee Brown, a Wisconsin prisoner, appeals the summary judgment rejecting his claims that prison officials violated his due-process rights in connection with (1) his transfer from one prison facility to another; (2) his initial placement at the new facility in

* We have agreed to decide the case without oral argument because the briefs 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).

administrative segregation; and (3) his later placement in disciplinary segregation. The district judge entered summary judgment because Brown presented no evidence that any defendant was personally involved in his transfer or that his time in segregated housing gave rise to a protected liberty interest. We affirm.

Because the case was resolved on cross-motions for summary judgment, we recount the facts in the light most favorable to the losing party—here, Brown. *Holcomb v. Freedman Anselmo Lindberg, LLC*, 900 F.3d 990, 992 (7th Cir. 2018). In late October 2020, Brown, accused of inciting a disturbance at Redgranite Correctional Institution, was transferred to Oshkosh Correctional Institution. At Oshkosh he was immediately placed in temporary lockup—a form of administrative segregation. *See* WIS. ADMIN. CODE DOC § 303.02(40) (2015). At first he did not receive a conduct report or temporary lockup order. But within a few weeks of notifying Oshkosh Security Director Emil Toney, he received both.

In late November Brown attended a disciplinary hearing over his role in the disturbance at Redgranite. A lieutenant denied his request to call two witnesses. After evidence (a video of the incident and staff members’ testimony) was presented, Brown was found guilty by two hearing officers (including defendant Eric Norman) of disobeying orders and participating in the Redgranite incident. However, Brown was not found guilty of inciting a disturbance. He was placed in disciplinary segregation for 120 days.

On administrative appeal the deputy warden returned the case to Norman because the reasons for denying Brown’s witnesses were insufficiently documented. Brown in turn submitted the written responses of one of the two denied witnesses (he chose not to have the other witness testify). Norman and the other officer reconsidered the evidence but again found Brown guilty of participating in the Redgranite disturbance and disobeying orders. Upon Toney’s approval Brown was released early from disciplinary segregation in January 2021, having served 59 days of the 120-day disposition.

In March 2021 Brown filed a grievance stating that he had not been informed that a rehearing had taken place. Several weeks later he was granted a formal rehearing, which he attended, and he again was found guilty of disobeying orders and participating in the disturbance. He was given only time served.

The following year Brown brought this civil-rights suit against six officials at Redgranite and Oshkosh for denying him due process when they (1) failed to provide

him a hearing when they transferred him to Oshkosh; (2) placed him, without proper process, in administrative segregation; (3) found him guilty of disobeying orders, again without proper process; and (4) deprived him of privileges and his personal items while in segregated housing. *See* 42 U.S.C. § 1983. The district judge screened Brown's operative complaint, *see* 28 U.S.C. § 1915A; dismissed claims against the Redgranite defendants (because Brown failed to allege that these defendants were personally responsible for his placement in solitary confinement); but permitted Brown to proceed with a Fourteenth Amendment due-process claim against Toney, Norman, and Captain Hans Kuster, who had delivered the initial conduct reports.

As discovery progressed Brown moved for leave to amend his complaint to name additional defendants, several of whom had been dismissed at screening. The magistrate judge, proceeding by consent, denied the motion because Brown had not reproduced his proposed amended complaint as required by local rules. The judge invited Brown to refile a rule-compliant motion, but Brown did not do so.

The magistrate judge eventually entered summary judgment for the three remaining defendants – Toney, Norman, and Kuster. First, the judge noted that Brown had not presented evidence that any of the remaining defendants was personally involved in his placement at Oshkosh in administrative segregation; that decision instead was made by Redgranite personnel. Brown also presented no evidence that Kuster or Toney had participated in the disciplinary hearings that led to his later placement in disciplinary segregation. Norman participated in the hearings, but he did not deny Brown the opportunity to call witnesses (that decision was made by a nondefendant officer). The magistrate judge then rejected Brown's remaining due-process claim that related to his time in disciplinary segregation. The judge explained, first, that the COVID pandemic triggered limitations of his various privileges and property but that those limitations had not amounted to a deprivation of a cognizable liberty interest. And second, even if Brown did have a liberty interest that was cognizable, he had not shown that the process he was afforded was constitutionally deficient because he received written notice 24 hours before the hearing, he appeared in person, and he was permitted to present evidence and eventually call witnesses.

On appeal Brown first challenges the magistrate judge's ruling that the Oshkosh defendants were not personally responsible for his transfer and placement in administrative segregation. But the judge properly determined that Brown's placement in administrative segregation was initiated by officials at Redgranite as soon as he became the subject of a pending investigation. And the magistrate judge correctly noted

that Toney, the only one of the Oshkosh defendants whose job had anything to do with housing classification, was not liable because he took only remedial steps to shore up the process that Brown had received.

Brown also challenges the district judge's decision at screening to dismiss his due-process claims against the Redgranite defendants. Brown argues that this ruling cannot be squared with the magistrate judge's determination at summary judgment that he needed to sue those individuals responsible for his transfer—those very Redgranite defendants. But narrowing down the defendants at screening was sound: Judges must dismiss claims that lack sufficient facts to infer a defendant's liability. *Schillinger v. Kiley*, 954 F.3d 990, 993–94 (7th Cir. 2020). Brown's complaint lacked any facts to implicate the Redgranite defendants, and he failed to take steps to amend his complaint in accordance with the magistrate judge's directive.

Second, Brown challenges the magistrate judge's determination that he lacked a cognizable liberty interest in his personal items or privileges. But the judge soundly reasoned that prison officials have "wide-ranging deference" when crafting and executing policies and practices in response to the pandemic. *Mays v. Dart*, 974 F.3d 810, 820–21 (7th Cir. 2020). Brown has not shown that pandemic policies imposed any atypical and severe hardship to create a cognizable liberty interest.

We have reviewed Brown's remaining arguments; none merits discussion.

AFFIRMED