NONPRECEDENTIAL DISPOSITION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 8, 2024*
Decided February 12, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-2458

SEAN STANKOWSKI,
Plaintiff-Appellant,

v.

KEVIN CARR, et al.,
Defendants-Appellees.

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

No. 23-cv-0563-bhl

Brett H. Ludwig,
Judge.

* The appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the 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

Sean Stankowski, a prisoner at the Oshkosh Correctional Institution in Wisconsin, appeals the dismissal of his complaint alleging that various staff members at the prison and officials in the Wisconsin Department of Corrections (DOC) violated his right to due process when they prevented him from presenting an audio recording at his disciplinary hearing. Because Stankowski failed to state a claim that the defendants deprived him of a constitutionally protected interest, we affirm.

A teacher at the prison issued a conduct report to Stankowski, accusing him of soliciting her by telling her she was "cute." Before his disciplinary hearing, Stankowski completed a form asking what evidence he wished to request. Believing that "audio monitoring" in the classrooms had captured his conversation with the teacher, Stankowski asked for the recording. The disciplinary hearing officer informed him that no recording existed and returned the form to him with his request crossed out. Stankowski filed a grievance, but a counselor denied it as premature because the hearing had not yet occurred.

At the hearing, Stankowski again requested the recording and again was informed that none existed. He was found guilty and sentenced to 21 days in disciplinary segregation; as a result, he lost his prison job. His administrative appeal of his disciplinary conviction was denied.

Stankowski filed a second grievance about the supposedly withheld audio recording. It was denied, and he appealed unsuccessfully, all the way up to the DOC Secretary. At each stage, he was told that there was no audio recording.

Stankowski then sued the teacher, the hearing officer, and other prison staff and DOC officials under 42 U.S.C. § 1983, alleging that they violated his due process rights under the Fourteenth Amendment when they refused to allow him to present exculpatory audio evidence at his disciplinary hearing or failed to remedy this alleged violation when he filed grievances and appeals. The district court screened his complaint under 28 U.S.C. § 1915A and dismissed it for failure to state a claim, concluding that Stankowski did not sufficiently allege that the defendants deprived him of a constitutionally protected liberty or property interest. He did not describe the length or conditions of his disciplinary confinement in a way that suggested it imposed an atypical or significant burden on his liberty. *See Sandin v. Conner*, 515 U.S. 472, 486 (1995); *Marion v. Columbia Corr. Inst.*, 559 F.3d 693, 697 (7th Cir. 2009). And because

prisoners do not have a property interest in their employment, his job loss could not be the basis of the claim. *See DeWalt v. Carter*, 224 F.3d 607, 613 (7th Cir. 2000).

The court gave Stankowski leave to amend his complaint, and Stankowski added that he lost $436.80 in wages and was in segregation for 21 days, but he did not include any more details about the conditions in segregation. The district court therefore dismissed the complaint again. Stankowski appeals, and we review the dismissal de novo. *Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020).

On appeal, Stankowski contends that, because he was denied the opportunity to use the alleged audio recording as evidence and sent to segregation, he lost his job and thus was deprived of a property interest without due process. (He does not argue on appeal that he had a liberty interest.) He asserts that mandatory language in his prison's work policy—that "inmates shall be paid" a certain wage—created a property interest in his income, just as mandatory language in a state's prison policies can create a liberty interest, *see Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 462–63 (1989).

We have not adopted the view that a prison policy alone can create an enforceable property interest. *See Tenny v. Blagojevich*, 659 F.3d 578, 581–82 n.3 (7th Cir. 2011) (noting circuit split after *Sandin*, 515 U.S. at 483–84, and declining to take a position). But even if we accepted Stankowski's premise, his argument fails. A protected property interest exists "only when the state's discretion is 'clearly limited such that the plaintiff cannot be denied the interest unless specific conditions are met.'" *Booker-El v. Superintendent*, 668 F.3d 896, 900 (7th Cir. 2012) (quoting *Brown v. City of Mich. City*, 462 F.3d 720, 729 (7th Cir. 2006). Here, the prison policy states that inmates who are "negatively removed" from work, including for being in disciplinary segregation, are considered "voluntary unassigned" for 90 days, unless the warden waives that status. Because the warden has the discretion to override the default policy, Stankowski cannot argue that the state's discretion "is so clearly limited" that the policy created a property interest in his prison wages. *See Booker-El*, 668 F.3d at 900–01.

Nor would Stankowski have a plausible claim that he received insufficient procedural protections even if there were a property interest at stake. *See Orozco v. Dart*, 64 F.4th 806, 814 (7th Cir. 2023). He received notice of the charge and a hearing, and he had the opportunity in advance to request evidence to present in his defense. *See Wolff v. McDonnell*, 418 U.S. 539, 564–66 (1974). Withholding exculpatory evidence can violate due process, *see Scruggs v. Jordan*, 485 F.3d 934, 939 (7th Cir. 2007), but Stankowski

provides no reason to believe that audio surveillance occurred; he even states that it would have been unlawful.

And to the extent that Stankowski sued supervisors, grievance counselors, and officials involved in his appeals, these defendants cannot be liable under § 1983 for failing to remedy the condition he complained of or supervising those who allegedly violated his rights. To be liable under § 1983, a defendant must be personally responsible for the violation of a constitutional right. *Taylor v. Ways*, 999 F.3d 478, 493 (7th Cir. 2021). Thus an official who merely reviews a grievance or appeal cannot be liable for the conduct forming the basis of the grievance. *Owens v. Evans*, 878 F.3d 559, 563 (7th Cir. 2017). And supervisors cannot be held responsible for the actions of subordinates or for failing to ensure that subordinates carry out their jobs correctly. *Horshaw v. Casper*, 910 F.3d 1027, 1029–30 (7th Cir. 2018).

The district court was therefore correct to dismiss the complaint and assess a strike under 28 U.S.C. § 1915(g), and we note for clarity of the record, *see Hill v. Madison County*, 983 F.3d 904, 906 (7th Cir. 2020), that this appeal counts as another strike.

AFFIRMED