RENDERED: April 10, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-001652-MR

DAVID MEADOR — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE DENNIS A. FRITZ, JUDGE
ACTION NO. 97-CI-00202

STEVE BERRY, WARDEN — APPELLEE

OPINION

AFFIRMING

** ** ** ** ** ** **

BEFORE: DYCHE, MILLER, and SCHRODER, JUDGES.

MILLER, JUDGE. David Meador brings this pro se appeal from a June 17, 1997 order of the Oldham Circuit Court dismissing his complaint filed pursuant to 42 U.S.C. § 1983. We affirm.

Meador is an inmate at the Luther Luckett Correctional Complex currently serving a ten-year sentence on a conviction for second-degree rape (Ky. Rev. Stat. (KRS) 510.050), first-degree sexual abuse (KRS 510.100), and second-degree sodomy (KRS 510.080).

On April 28, 1997, Meador requested authorization from prison authorities for work release outside the prison. At the time, Meador had been assigned a medium security classification based on the nature of the offenses for which he had been con-

victed. On April 30 1997, Steve Berry, the prison warden, denied Meador's request indicating that he would not permit a minimum security work authorization because of the nature of Meador's offenses.

On May 9, 1997, Meador filed a complaint in circuit court pursuant to 42 U.S.C. § 1983 alleging a violation of the due process clause of the Fourteenth Amendment. Berry filed an answer denying any constitutional violations and requesting dismissal of the action for failure to state a claim for relief. Meador filed an extensive response to the answer and request for dismissal. On June 17 1997, the trial court issued an order dismissing the complaint.[1] On June 20, 1997, Meador filed a motion to reconsider,[2] which the circuit court denied. This appeal followed.

Meador argues that he was denied procedural due process because he was summarily denied a minimum security classification and an opportunity for work release outside of the prison. He contends that KRS 197.140 has created a protected liberty interest entitling him to a minimum security classification and the ability to work outside the prison. Meador asserts that because he has already served at least one year of his sentence within

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[1]The circuit court actually treated the complaint as a motion for declaratory judgment, but this does not significantly affect the analysis of the substantive issues on appeal.

[2]Although the Civil Rules do not provide for a motion to reconsider, such a motion may be treated as a motion to alter, amend or vacate under Ky. R. Civ. P. 59.05. Commonwealth v. Newsome, Ky., 296 S.W.2d 704 (1956).

the prison and has not violated any prison policies, he qualified for work release under KRS 197.140. Meador argues that he has a constitutional liberty interest based on a reasonable expectation in a minimum classification. We disagree.

A protected liberty interest generally "may arise from two sources – the Due Process Clause itself and the laws of the states [citation omitted]." Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 460, 109 S. Ct. 1904, 1908, 104 L. Ed. 2d 506 (1989), and Caldwell v. Miller, 790 F.2d 589, 602 (7th Cir. 1986). Liberty interests may also be created through state government policy statements or regulations. Bills v. Henderson, 631 F.2d 1287 (6th Cir. 1990). An inmate has no inherent constitutional due process right to a particular security classification. Beard v. Livesay, 798 F.2d 874 (6th Cir. 1986), and Moody v. Daggett, 429 U.S. 85, 97 S. Ct. 274, 50 L. Ed. 2d 236 (1976).

In addition, an inmate has no constitutional right emanating from the due process clause to work release. Whitehorn v. Harrelson, 758 F.2d 1416 (11th Cir. 1985), and Dominique v. Weld, 880 F. Supp. 928 (D. Mass. 1995); cf. Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 99 S. Ct. 2100, 60 L. Ed 2d 668 (1979) (holding there is no constitutional right to conditional release before expiration of valid sentence). Therefore, any liberty interest which could exist in a particular security classification must be based on state law or regulations.

Meador's complaint implicates two state statutes: KRS 197.065, which involves security classification, and KRS 197.140, which deals with work release. KRS 197.065 provides in relevant part as follows:

> (1) The commissioner shall classify all prisoners and segregate the prisoners in all of the state penal institutions and reformatories according to their past records, the probability of their being rehabilitated, the influence such prisoners might exert upon fellow prisoners, and for any other purpose that the commissioner, in his discretion, may deem sufficient for the discipline of the prisoners in any institution or reformatory, and for the rehabilitation of any prisoners.

KRS 197.140 states in pertinent part as follows:

> No prisoner who is serving a sentence for rape, attempted rape or who has been convicted of robbery in the first degree, assault in the first degree, or who has been sentenced to life imprisonment shall be worked or released for work outside of the walls of the prison until he has actually served within the walls of the prison for at least one (1) year of his sentence and has been classified as minimum custody according to the Department of Corrections classification system. No prisoner who has escaped or attempted to escape from an adult correctional institution or local detention center or jail within the past five (5) years shall be worked or released for work outside of the walls of the prison.

In the recent case of Sandin v. Conner, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995), the Supreme Court adjusted the approach to determining whether state law or regulations created a due process liberty interest. The Court indicated that in order to establish a state-created liberty interest, an inmate must demonstrate two factors: 1) the

presence of state statutory or regulatory language creating "specific substantive limitations," intended to circumscribe the discretion of prison officials (Olim v. Wakinekona, 461 U.S. 238, 249-50, 103 S. Ct. 1741, 1747-48, 75 L. Ed. 2d 813 (1983)), and 2) the imposition of "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin, 515 U.S. at 484, 115 S. Ct. at 2300; see also Rimmer-Bey v. Brown, 62 F.3d 789 (6th Cir. 1995) (holding that an inmate must prove existence of both mandatory language in regulation and atypical and significant hardship).

In Canterino v. Wilson, 869 F.2d 948 (6th Cir. 1989), the Court addressed the issue of whether the Kentucky statutes on classification and work release created a liberty interest. The Court held that neither KRS 197.065 nor KRS 197.140 created a protected liberty interest because they did not contain sufficient mandatory language with specific substantive predicates that restricted the discretion of prison officials. Cf. Belcher v. Kentucky Parole Board, Ky. App., 917 S.W.2d 584 (1996) (involving liberty interest in parole regulations). Although Canterino involved prior versions of these two statutes, prison officials continue to have ultimate authority and immense discretion in determining security classification and in granting work release under the current statutes. Moreover, Meador has failed to establish sufficient atypical or significant hardship associated with his medium security classification and denial of work release. Finally, in Mahoney v. Carter, Ky., 938 S.W.2d 575

(1997), the Kentucky Supreme Court held that the policies and procedures promulgated by the Department of Corrections did not create a liberty interest in a particular security classification status. As a result, Meador has not established that either state statutes or prison regulations created a protected constitutional liberty interest in relation to security classification or work release.

Thus, the circuit court properly dismissed Meador's civil rights complaint because he failed to show that prison officials violated any federal constitutional rights by denying his request for work release outside of the prison.

For the above-stated reasons, we affirm the order of the Oldham Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
David Lynn Meador LaGrange, Kentucky	No brief