

STATE OF MICHIGAN
COURT OF APPEALS

KAZHMERE JONES,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

February 23, 1999

No. 206249

Court of Claims

LC No. 95-015875

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Plaintiff appeals by right from an order of the Court of Claims, dismissing this action seeking damages for alleged violations of plaintiff's rights under the Michigan Constitution. We affirm, but for different reasons than stated by the lower court. See, e.g., *People v Lucas*, 188 Mich App 554, 577; 470 NW2d 460 (1991), lv den 439 Mich 888 (1991).

In December of 1994, plaintiff was found guilty of the prison misconduct offense of disobeying a direct order. Plaintiff alleges that he was not properly advised, as required by *People v Carr*, 149 Mich App 653; 386 NW2d 631 (1986), lv den 425 Mich 864 (1986), that the statement he submitted in support of his defense at the misconduct hearing would not be admissible against him at any subsequent criminal trial on charges relating to the misconduct, except for purposes of impeachment or rebuttal.

The rule in *Carr* was adopted to prevent prison inmates from being forced to forego their ability to present a valuable defense at the disciplinary proceeding through their own statements for fear of having their statements later used against them in a criminal trial. 149 Mich App at 658-659. Here, however, plaintiff does not allege that the lack of such advice in any way adversely affected his choice of defenses or the ultimate outcome of the misconduct hearing. Any error which does not affect the outcome of the prison misconduct hearing may be considered harmless and does not amount to a violation of plaintiff's rights under the Michigan Constitution. See *Feaster v Portage Public Schools*, 210 Mich App 643, 655; 534 NW2d 242 (1995) reversed on other grounds 451 Mich 351; 547 NW2d 328 (1996); *Verbison v Auto Club Ins Ass'n*, 201 Mich App 635, 641; 506 NW2d 920

(1993), lv den 445 Mich 873 (1994). Therefore, the trial court properly dismissed plaintiff's lawsuit for failure to state a claim, albeit for different reasons.

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff