

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

CHARLES B. SANDERS, )  
Plaintiff, )  
 )  
v. ) C.A. No. SS07M-08-014-RFS  
 )  
CARL DANBERG, COMMISSIONER, )  
STATE DEPARTMENT OF CORRECTION )  
MIKE DELROY, WARDEN OF SUSSEX )  
CORRECTIONAL INSTITUTION, MELVIN )  
HENNESSY, SECURITY SUPERINTEN- )  
DANT, STAFF LT. MICHAEL ATTALION, )  
JOSEPH JOHNSON, STAFF LT. - HEARING )  
OFFICER, SERGEANT JEREMY BLANK )  
SUSSEX CORRECTIONAL INSTITUTION, )  
Defendants. )

*Upon Plaintiff's Petition for Writ of Mandamus. Dismissed.*  
*Upon Defendants' Motion for Summary Judgment. Granted.*  
*Upon Defendants' Motion for Summary Judgment. Denied.*

Submitted: September 22, 2009  
Decided: October 21, 2009

**ORDER**

Charles B. Sanders, Pro Se Plaintiff.

Ophelia M. Waters, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, attorney for Defendants.

STOKES, J.

The parties have filed cross motions for summary judgment on Charles Sanders' petition for a writ of mandamus. Petitioner is an inmate serving a period of incarceration in the Sussex Correctional Institution in Georgetown, Delaware. His petition is based on his removal from general population to a segregated housing unit after tobacco was found in his cell in violation of a Department of Corrections ("DOC") rule. Respondents argue that Petitioner has failed to state a claim upon which relief may be based because neither DOC regulations nor the Due Process Clause creates a liberty interest that was violated by Petitioner's placement in a segregated unit without a hearing. Petitioner has filed a cross motion for summary judgment, which restates his position. For the reasons explained below, the Court finds that Respondents are entitled to judgment as a matter of law, and their motion for summary is therefore granted. Petitioner's motion for summary judgment is denied as a matter of law, and his petition for a writ of mandamus is dismissed.

***Facts.*** While some minor facts are in dispute, the following material relevant facts are uncontested. On May 30, 2007, two DOC officers, one of whom was Respondent Jeremy Blank, were performing a cell search in the building where Petitioner was housed. The officers were looking for any smuggled goods or illegal items. During the search of Petitioner's cell, the officers found significant amounts of tobacco packaged in individual disposable bags. Also found was a quantity of cigarette rolling papers. The contraband was turned over to another officer, and Petitioner was transferred to the Administrative Segregated Disciplinary Area (ASDA), pending outcome of an investigation. On June 7,

2007, a disciplinary hearing was conducted. The evidence taken from Petitioner's cell was introduced, and Petitioner was found guilty of Possession of Dangerous Contraband. Petitioner was given 15 days' isolation and 15 days' loss of good time credits. Petitioner served his time in isolation from June 15 to June 30, 2007, in the Disciplinary Detention Area.

***Requested relief.*** Petitioner's internal DOC appeal was denied, and he now turns to the Court to address his demands. He asks the Court to order the following injunctive relief and money damages:

1. The conviction be removed from his record.
2. The return of the 15 good time days taken from him.
3. Payment of \$70 for missed work in June and July.
4. Replacement of \$75 lost in the Commissary.
5. \$500 per day in ASDA and \$1000 per day in isolation.

***Standard of review.*** Although Petitioner has not used the term "mandamus," his action by the nature of the relief sought constitutes a petition for a writ of mandamus, and the Court deems it to be such. The extraordinary writ of mandamus is a command from a court of law to a lower court, board or tribunal requiring the performance of a nondiscretionary duty where no other remedy exists.<sup>1</sup>

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<sup>1</sup>*In re Brookins*, 736 A.2d 204, 206 (Del. 1999).

The Court will grant a motion for summary judgment only if it is shown that there is no genuine issue as to any material fact and that one of the parties is entitled to judgment as a matter of law. Super. Ct. Civ. R. 56( c ). In a case involving cross motions for summary judgment, the parties implicitly concede the absence of material factual disputes and acknowledge the sufficiency of the record to support their respective positions.<sup>2</sup> Further, under 56(h) “the court shall deem the motions to be the equivalent of a stipulation for a decision on the merits based on the record submitted with the motions.” Petitioner has demonstrated his familiarity with both procedural and substantive law in his submissions to the Court, and the usual standard for cross motions will apply. Thus the Court must determine whether Petitioner is entitled to the writ of mandamus as a matter of law.

***Petitioner’s allegations.*** Petitioner asserts six violations of his due process rights by prison authorities. First, he claims that under the Inmate Reference Manual, Respondent Staff Lieutenant Michael Attalion failed in his duty by sending Petitioner to ASDA without having reviewed the incident report. Second, Petitioner alleges that under the Inmate Reference Manual, he was entitled to have a hearing between 24 and 72 hours of the actual incident. Third, Petitioner objects to being written up for possession of tobacco but charged with Possession of Dangerous Contraband. Fourth, Petitioner argues that Respondent Staff Lieutenant Joseph Johnson failed to follow prison regulations by delivering his decision on the day of the hearing instead of two days later. Fifth, Petitioner objects to the finding made

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<sup>2</sup>*Browning-Ferris, Inc. v. Rockford Enter., Inc.*, 642 A.2d 820, 822 (Del. Super. Ct. 1993).

against him by Respondent Warden Michael Deloy, who concurred with the administrative outcome because of the quantity of tobacco and the monetary value. Sixth, Petitioner asserts that Respondent Commissioner Carl Danberg violated his due process rights by failing to remedy the problem which Petitioner presented to him in a letter.

Finally, Petitioner argues that being taken out of general population and placed in ASDA without benefit of a hearing was a violation of his due process liberty rights.

**Issue.** The issue before the Court is whether Petitioner had a protected liberty interest that was violated either by prison officials or by his transfer to ASDA without benefit of a hearing.

**Discussion.** A protected liberty interest may be found under either the federal Due Process Clause or state law.<sup>3</sup> In *Sandin v. Conner*,<sup>4</sup> the United States Supreme Court granted *certiorari* to reexamine the circumstances under which state prison regulations afford inmates a liberty interest protected by the Due Process Clause. In *Sandin*, the petitioner alleged that the respondents deprived him of procedural due process when a hearing committee refused to allow him to present witnesses during a disciplinary hearing and then sentenced him to 30 days' segregation for misconduct. The Court held that the petitioner's liberty interests were

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<sup>3</sup>*Wolff v. McDonnell*, 418 U.S. 539 (1974)( finding that Due Process Clause does not create liberty interest in credit for good behavior, but that statute created liberty interest in "shortened prison sentence" which resulted from good time credits).

<sup>4</sup>515 U.S. 472 (1995).

not violated under either the Hawaii prison regulations or the Due Process Clause itself.<sup>5</sup> The Court reasoned that although the states may create liberty interests which are protected by the Due Process Clause, such interests will be generally limited to freedom from conditions which impose “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.”<sup>6</sup>

Petitioner relies instead on *Hewitt v. Helms*<sup>7</sup> as support for his assertion that a hearing must be held before an inmate may be moved into administrative segregation. In *Hewitt*, the Court somewhat arduously examined prison regulations to assess whether they created a mandatory liberty interest.<sup>8</sup> However, the *Sandin* Court rejected without overturning *Hewitt*, stating that “[t]he methodology used in *Hewitt v. Helm*. . . has impermissibly shifted the focus of the liberty interest inquiry from one based on the nature of the deprivation to one based on language of a particular regulation.”<sup>9</sup> At least two undesirable results were likely to follow: states could lose some of their incentive to codify prison management procedures, and courts could become enmeshed in the day-to-day management of prisons.<sup>10</sup> *Sandin* abandoned *Hewitt*’s methodology of searching through statutes for mandatory state-created

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<sup>5</sup>*Id.* at 484.

<sup>6</sup>*Id.*

<sup>7</sup>459 U.S. 460 (1983).

<sup>8</sup>*Sandin* at 480-81.

<sup>9</sup> *Id.* at 481-82.

<sup>10</sup> *Id.* at 482.

due process rights and refocused judicial attention on the nature of an alleged deprivation of due process.<sup>11</sup>

Here, the Court addresses first the alleged deprivations of due process by the actions of prison personnel. Despite Petitioner's conclusory assertions, the actions of the officers and officials involved in these events do not form the basis of a claim for a writ of mandamus to issue. The Respondents' conduct did not amount to a restraint exceeding Petitioner's sentence in "such an unexpected manner as to give rise to protection by the Due Process Clause of its own force."<sup>12</sup> Examples of the type of conduct that does exceed the expectation of a sentence are the transfer to a mental hospital of an inmate not sentenced to such confinement<sup>13</sup> and involuntary administration of psychotropic drugs.<sup>14</sup> The case at bar involves no such measures. Petitioner argues that prison personnel violated certain provisions of Sussex Correctional Institutional Inmate Reference Manual, but that document has only the weight the DOC decides to give it. It does not have the force of law and does not create or purport to create a protected liberty interest.

The Court finds as a matter of law that the actions of prison personnel which Petitioner describes in the Amended Complaint do not raise a protected liberty interest under

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<sup>11</sup>*Id.* at 484 n. 5.

<sup>12</sup> *Id.* at 484.

<sup>13</sup>*Vitek v. Jones*, 445 U.S. 480 (1980).

<sup>14</sup>*Washington v. Harper*, 494 U.S. 210 (1990).

either the Due Process Clause or state law. They are instead discretionary actions within the broad scope of duties properly assigned to personnel running a correctional facility.

The remaining issue is whether Petitioner's placement in a segregated housing unit prior to an official determination of guilt violated his due process rights. Since both parties have moved for summary judgment, the only facts the Court needs to consider are those just mentioned: immediately after the tobacco was found in his cell, Petitioner was removed from a general population housing unit and placed in a segregated area pending an investigation and possible disciplinary action. Both parties agree to the existence of these facts.

By statute, the DOC is not required "to institute or maintain any system of classification of convicted persons for the purpose of assignment to institutions or housing units within institutions."<sup>15</sup> In other words, inmates in Delaware's penal system have no protected liberty interest in a particular classification or in a particular housing unit. Nor is such a liberty interest recognized in case law. In *Clough v. State*, the Delaware Supreme Court, relying on *Sandin v. Conner*, found that the DOC had no obligation to assign the petitioner to a work program.<sup>16</sup> The Third Circuit has stated that prison officials may change an inmate's housing status based solely on security concerns.<sup>17</sup> The United State Supreme

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<sup>15</sup>11 *Del. C.* § 6529 (e).

<sup>16</sup>*Clough v. State*, 686 A.2d 158 (Del. 1996) (citing *Sandin v. Conner*, 515 U.S. 472 (1995)).

<sup>17</sup>*Mims v. Shapp*, 744 F.2d 946, 953 (3d. Cir. 1984).

Court has stated that placement of inmates within the prison system is among the “wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than the . . . court.”<sup>18</sup>

The *Sandin* Court found that state-created liberty interests can be violated when an “atypical and significant hardship”<sup>19</sup> is imposed on the inmate relative to ordinary prison life. Delaware has not created a liberty interest in housing or classifications, as shown by the language of § 6529(e). The Due Process Clause does not provide protection for events such as this that are expected occurrences of prison life. It reserves its protection for events outside the anticipated parameters of the sentence, such as those previously mentioned – transfer to a mental institution or involuntary administration of psychotropic drugs. Nothing of that nature has occurred in this case. An inmate was transferred to a different housing unit because of the outcome of a search of his cell, and such a transfer falls within the acceptable range of conduct on the part of prison officials. There was no failure to perform a non-discretionary duty to warrant a writ of mandamus.

**Conclusion.** The Court concludes that the conduct of the prison officers and officials fell within the expected scope of Petitioner’s sentence and did not violate any protected liberty interest under either the federal Due Process Clause or state law. Respondent’s motion for summary judgment is **Granted**. Petitioner’s motion for summary is **Denied**. His

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<sup>18</sup>*Meachum v. Fano*, 427 U.S. 215, 225 (1976).

<sup>19</sup>*Santim* at 484.

petition for a writ of mandamus is *Dismissed*.

***IT IS SO ORDERED.***

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Richard F. Stokes, Judge

Original to Prothonotary