

NONPRECEDENTIAL DISPOSITION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 August 16, 2023*

Decided August 16, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1198

DARYL K. BURNETT, JR.,
Plaintiff-Appellant,

v.

KEITH BUTTS, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Southern District of
Indiana, Terre Haute Division.

No. 2:21-cv-00201-JRS-MJD

James R. Sweeney II,
Judge.

ORDER

A district court granted the habeas petition of Daryl Burnett, an Indiana prisoner, to restore some good-time credits, ruling that the prison had removed them without due process. Burnett has now sued the prison's staff, alleging that they violated his due-

* 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).

process rights when removing those credits. The district court dismissed the complaint at screening. Because Burnett has adequately alleged that a hearing officer deprived Burnett of those credits without due process, we affirm in part and vacate in part.

At the pleading stage, we take as true Burnett's allegations in his complaint and any consistent, additional allegations in his appellate brief. See *Schillinger v. Kiley*, 954 F.3d 990, 993–94 (7th Cir. 2020); *Echols v. Craig*, 855 F.3d 807, 811 (7th Cir. 2017). When Burnett was incarcerated at the New Castle Correctional Facility in 2018, he was charged with violating prison rules by possessing something that resembled a controlled substance. At the disciplinary hearing, a hearing officer (referred to as "T. Thompson") did not allow Burnett to present evidence, told him that he will be convicted "with or with[ou]t evidence," and then convicted Burnett of the infraction without any evidence. Burnett's administrative appeals were initially unsuccessful.

Burnett faced several consequences because of his conviction. First, he lost good-time credits. In addition, he lost his prison jobs and some wages associated with them; he was transferred to segregation for an unspecified time in another prison; and he lost various privileges (phone time, visitation, commissary, and prison programming).

Burnett litigated this discipline in two steps. First, he successfully petitioned for a writ of habeas corpus. The district court reasoned that the record did not contain "some evidence" that Burnett had violated the prison rules; therefore, discipline was unwarranted. See *Burnett v. Warden*, No. 1:18-cv-04078-RLY-DLP (S.D. Ind. Dec. 12, 2019). As a result, the prison restored Burnett's good-time credits just over a year after having taken them away.

Second, Burnett sued Thompson and two others under 42 U.S.C. § 1983 for violating his due-process rights under the Fourteenth Amendment, seeking damages. The district court screened and dismissed his complaint under 28 U.S.C. § 1915A but allowed him to amend it. Burnett did so, adding new defendants and allegations about inhumane conditions at his new prison. The court dismissed without prejudice the new claims and defendants as misjoined with the due-process claims, and it again dismissed the due-process claims, this time with prejudice. It reasoned that his job and wage losses, segregation, and reduced privileges did not involve any interests that his right to due process protected. The court did not address Burnett's loss of good-time credits.

On appeal, Burnett maintains that the defendants deprived him of liberty and property interests without due process. We review the screening order dismissing that claim de novo, using the same standard for reviewing a motion to dismiss under

Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Schillinger*, 954 F.3d at 993–94. We begin with his loss of good-time credits. The defendants argue—in a single, citation-free sentence—that Burnett’s loss of good-time credits did not deprive him of liberty because the prison returned his credits after he successfully petitioned the court.

Burnett is correct that his loss of good-time credits deprived him of a protected liberty interest during the period that the prison withheld them. Indiana prisoners have a liberty interest in good-time credits, and state officials may not revoke them without due process. *Ellison v. Zatecky*, 820 F.3d 271, 274 (7th Cir. 2016). The subsequent return of his credits does not negate his claim because prisoners may not seek damages for procedurally flawed hearings that deprive them of their liberty in good-time credits unless and until the deprivation is overturned. See *Edwards v. Balisok*, 520 U.S. 641, 646, 648 (1997); *Savory v. Cannon*, 947 F.3d 409, 415, 426 (7th Cir. 2020) (en banc). But once that has occurred, prisoners may seek damages under § 1983 for the period during which they were deprived of liberty. See *Edwards*, 520 U.S. at 646, 648; *Morgan v. Schott*, 914 F.3d 1115, 1122 (7th Cir. 2019). Burnett’s successful habeas petition and the return of good-time credits—rather than preventing this suit—was its prerequisite.

Because Burnett has alleged that the defendants deprived him of his liberty in good-time credits, we ask whether he alleged that they did so without due process. See *Lisle v. Welborn*, 933 F.3d 705, 720–21 (7th Cir. 2019). State officials deny a prisoner due process if, before depriving the prisoner of liberty, they do not provide (1) an impartial decisionmaker, (2) “some evidence” for the conviction, and (3) a limited chance to present a defense. See *Superintendent v. Hill*, 472 U.S. 445, 454 (1985); *Chambers v. Ciolli*, 19 F.4th 984, 986 (7th Cir. 2021); *Jones v. Cross*, 637 F.3d 841, 845 (7th Cir. 2011). Burnett has alleged that Thompson denied him these procedures: Thompson was not impartial, promising to find Burnett guilty no matter what. Cf. *Prude v. Meli*, No. 21-1320, 2023 WL 5010780, at *5 (7th Cir. Aug. 7, 2023) (vacating judgment for prison investigator because his statement that property would not be returned “no matter what happened during the hearing” required trial on § 1983 suit about unfair hearing). In addition, Thompson did not allow Burnett to challenge the evidence against him, and Thompson convicted Burnett with no evidence of a violation. We thus must remand the case for further proceedings on the claim against Thompson. But Burnett has not stated a similar claim against the two other defendants (the warden and an “appeal review officer”). He states only that they “denied him due process,” but he does not supply, in his complaint or appellate brief, the required factual details of what they did wrong. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

We pause to observe that, on remand, the damages available from Thompson are limited. The defendants may argue that Burnett did not spend more time in prison as a result of his temporary loss of good-time credits. But beyond that, as a prisoner Burnett is barred from recovering emotional damages without a physical injury, see 42 U.S.C. § 1997e(e), and he alleges none. He may, however, seek nominal damages. *Manley v. Law*, 889 F.3d 885, 890 (7th Cir. 2018) (citing *Carey v. Phiphus*, 435 U.S. 247, 263–64, 266 (1978)). Burnett may also seek punitive damages, because, as he states in his appellate brief, Thompson promised to convict Burnett “with or with[ou]t evidence,” and this allegation, if true, could allow a jury to find that Thompson acted with an “evil motive” or “reckless or callous indifference” to Burnett’s procedural rights, a condition of punitive damages. *Green v. Howser*, 942 F.3d 772, 781 (7th Cir. 2019).

The rest of Burnett’s alleged losses do not involve interests protected by due-process rights. First, he alleges that after his disciplinary conviction he was put in segregation. Segregation affects a liberty interest only when it “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life,” *Sandin v. Conner*, 515 U.S. 472, 484 (1995), which depends on the duration and conditions of the segregation, *Hardaway v. Meyerhoff*, 734 F.3d 740, 743 (7th Cir. 2013). But Burnett alleges no details about his segregation, despite receiving an opportunity to amend his complaint; without those facts, his claim fails. See *Lisle*, 933 F.3d at 720–21.

Second, Burnett appears to allege that, after the prison restored his credits, it never paid him wages for prison work he completed before his disciplinary conviction. He contends that a policy of the Indiana Department of Corrections mandates that, once the prison restored his credits, the Department had to pay those wages. But this is a substantive claim against the Department, not a procedural claim about due process against the three individual defendants he has sued. See *Taake v. County of Monroe*, 530 F.3d 538, 543 (7th Cir. 2008). And because he has not sued the Department for money—nor could he in this court, see *Wynn v. Southward*, 251 F.3d 588, 592 (7th Cir. 2001) (Indiana Department of Corrections entitled to sovereign immunity)—the claim fails.

Finally, we quickly dispatch Burnett’s other allegations. He does not have a liberty interest in (1) attending prison programming, *Zimmerman v. Tribble*, 226 F.3d 568, 571–72 (7th Cir. 2000); (2) avoiding transfer to another prison, *Lekas v. Briley*, 405 F.3d 602, 609 (7th Cir. 2005); (3) phone, visitation, or commissary privileges, *id.* at 610–12; *Thomas v. Ramos*, 130 F.3d 754, 762 n.8 (7th Cir. 1997); or (4) his prison job, *DeWalt v. Carter*, 224 F.3d 607, 613 (7th Cir. 2000), *abrogated on other grounds by Savory*, 947 F.3d

at 422–23. Therefore, the prison could withhold these aspects of prison life from Burnett without offending his right to due process.

We thus AFFIRM the judgment in all respects, except that we VACATE the judgment as to Thompson on Burnett’s due-process claim and REMAND for further proceedings consistent with this order. Given the narrow scope of the remand, we encourage the parties to resolve this matter expeditiously.