

NONPRECEDENTIAL DISPOSITION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 3, 2023*

Decided August 3, 2023

Before

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1462

VIRGIL E. GRIFFIN,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Northern District of
Indiana, South Bend Division.

v.

No. 3:22-CV-122-JD-MGG

ROBERT CARTER, et al.,
Defendants-Appellees.

Jon E. DeGuilio,
Judge.

ORDER

Virgil Griffin, an Indiana prisoner, alleged that state prison officials discriminated against him and others in administrative segregation, in violation of the Equal Protection Clause, by restricting their access to the commissary and other

* 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 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).

supplies. The district court screened and dismissed his complaint, concluding that the heightened security risks involved in administrative segregation, and a recent string of assaults on prison staff mentioned in Griffin's complaint, provided a rational basis for this distinct treatment. We affirm the judgment.

In December 2021, prison officials transferred Griffin from the Pendleton Correctional Facility to the Indiana State Prison and promptly placed him in administrative segregation. (He explains on appeal that they placed him there because he had been involved in a fight at Pendleton.) According to his complaint, starting a few months earlier, Indiana State Prison officials had implemented a new policy restricting access to certain items for prisoners in administrative segregation, after a string of violent assaults on prison staff. He alleged that prisoners in administrative segregation could not order food from the commissary and could obtain only limited sanitation and cleaning supplies, clothing, and bedding, compared to what was available to the prison's general population.

After three months in segregation, Griffin filed his complaint under 42 U.S.C. § 1983 against several high-ranking prison officials contesting these restrictions. He promptly amended his complaint after filing and alleged that the restrictions irrationally discriminated against prisoners in administrative segregation, relative to those in the general prison population, in violation of the Equal Protection Clause of the Fourteenth Amendment. He asserted that there was no reason to treat them differently and subject them to such "inhumane" conditions because prisoners may be placed in administrative segregation without committing a disciplinary infraction. Griffin's amended complaint also observed, however, that some prisoners were placed in administrative segregation because they were "under investigation," "may present a threat to the safety of others," or had "a record of violence [or] assault on staff."

About a year later, the district court screened and dismissed Griffin's complaint. 28 U.S.C. § 1915A. It concluded that prisoners in administrative segregation were not similarly situated to those in the general population and posed different security risks based on Griffin's own summary of the reasons why prisoners may be segregated. Given these differences, the district court concluded that prison officials had a rational basis for implementing the restrictions after the surge in assaults that Griffin described.

The court also considered whether Griffin might have a due process interest in avoiding prolonged time in administrative segregation but concluded that his complaint fell short of raising a due process claim. At the time of his complaint he had

been in administrative segregation for only three months, and the court, relying on *Marion v. Columbia Corr. Inst.*, 559 F.3d 693, 698 (7th Cir. 2009), determined that this reasonable duration was not long enough to implicate a liberty interest. Believing that further amendment would be futile, the district court dismissed the complaint with prejudice.

On appeal, Griffin first challenges the district court's conclusion that prisoners in administrative segregation were not similarly situated to prisoners in the general population. He relies on our observation that prison officials have extensive discretion to decide whether to place prisoners in administrative segregation, and that, therefore, prisoners in administrative segregation and the general population are "one and the same." *Lekas v. Briley*, 405 F.3d 602, 608 (7th Cir. 2005). Because Griffin does not allege that prison officials discriminated against him based on a protected classification, he needed to allege facts plausibly suggesting that the officials treated him differently from others similarly situated, and that the treatment was not rationally related to a legitimate interest. *See Flynn v. Thatcher*, 819 F.3d 990, 991 (7th Cir. 2016). The state has an obvious interest in ensuring prison security, and prison officials have broad discretion to further that goal. *Mays v. Dart*, 974 F.3d 810, 820 (7th Cir. 2020).

Griffin has not carried his burden to demonstrate that officials exceeded that discretion and adopted an irrational policy. Even if we accept that prisoners in administrative segregation and those in the general population are just one group, there would still be reasons to treat them differently. Indeed, *Lekas* acknowledged the harsh conditions in administrative segregation, relative to the general population, but explained that these were just ordinary facts of prison life. *See Lekas*, 405 F.3d at 609. As the district court recognized, Griffin's complaint provided several reasons why prisoners in administrative segregation pose different security risks: because they may be under investigation, present a threat to others, or have a history of violence (including against staff members). Although Griffin insists prisoners may also be segregated for reasons not involving acute security threats, state officials may create classifications that are over- or underinclusive without violating the Fourteenth Amendment. *See Hope v. Comm'r of Indiana Dep't of Corr.*, 66 F.4th 647, 651 (7th Cir. 2023). The restrictions alleged here are logically connected to the goal of promoting prison security, and no more tailoring was necessary. *See Hammer v. Ashcroft*, 570 F.3d 798, 800–01 (7th Cir. 2009) (en banc).

Griffin next contends that the district court should have allowed him an opportunity to amend his complaint a second time, to raise a claim that his prolonged

detention in administrative segregation violated the Due Process Clause. Although he had spent only three months in segregation when he had filed the amended complaint, Griffin clarifies on appeal that he was still in segregation by the time the district court screened his complaint a year later. He asserts that this duration amounts to a significant and atypical hardship that gives rise to a liberty interest. *Sandin v. Conner*, 515 U.S. 472, 486 (1995); *Marion*, 559 F.3d at 698 (concluding prisoner stated procedural due process claim after 240 days in disciplinary segregation). He otherwise contends that the conditions in segregation were so inhumane that they implicated a liberty interest even at three months. *See Kervin v. Barnes*, 787 F.3d 833, 836 (7th Cir. 2015) (“A considerably shorter period of segregation may, depending on the conditions of confinement and on any additional punishments, establish a violation ...”).

Even if Griffin had a liberty interest in avoiding administrative segregation, however, he has not pleaded any facts suggesting that he was denied process. *See* IND. CODE § 11-10-1-7(b) (requiring review of non-disciplinary segregated status every 30 days). Moreover, he did not explain in his appellate brief or to the district court how he would have amended the complaint to allege that he had been denied any process that he was due, such as periodic reviews of his confinement status. *See Isby v. Brown*, 856 F.3d 508, 525 (7th Cir. 2017). And though Griffin maintains that he could not obtain sufficient sanitation equipment or nutrition with limited commissary options, he does not suggest that the conditions of administrative segregation amounted to cruel and unusual punishment, independent of any process. *See Townsend v. Fuchs*, 522 F.3d 765, 772 (7th Cir. 2008) (explaining that challenge to conditions of discretionary segregation is better analyzed under the Eighth Amendment). The district court did not abuse its discretion here because courts may deny a motion for leave to amend when the plaintiff does not explain how the amendment would cure the deficiencies in the complaint. *See Pension Tr. Fund for Operating Eng'rs v. Kohl's Corp.*, 895 F.3d 933, 942 (7th Cir. 2018).

AFFIRMED