NONPRECEDENTIAL DISPOSITION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 January 16, 2024*
Decided January 17, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1723

CROSETTI BRAND,
Plaintiff-Appellant,

v.

BART D. TOENNIES, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois.

No. 20-cv-00602-SPM

Stephen P. McGlynn,
Judge.

O R D E R

Crosetti Brand, an Illinois state prisoner, appeals the dismissal of his suit challenging the process he was given in his disciplinary proceedings. *See* 42 U.S.C. § 1983. The district judge dismissed his suit for failure to state a claim. We affirm.

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* 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).

Brand sued the director of the Illinois Department of Corrections (IDOC) and two members of his prison's adjustment committee for violations of his right to due process when they "refused" to allow him to present a witness at a disciplinary hearing. Because of these flawed procedures, he asserted, the defendants punished him—stripping him of 30 days' good-time credits and imposing one month's segregation, two months' C-grade status (restrictions on commissary and other privileges), and a disciplinary transfer.

A few months after Brand filed this suit (and after he had appealed his grievance through the prison's internal administrative process), the IDOC director restored his good-time credits. The district judge, in turn, permitted Brand to amend his complaint and proceed with his due process claim. *See Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994); *Edwards v. Balisok*, 520 U.S. 641, 646–48 (1997).

Because Brand's good-time credits had been restored, the defendants moved under Rule 12(b)(1) of the Federal Rules of Civil Procedure to dismiss the complaint for lack of jurisdiction on mootness grounds.

The judge granted the motion to dismiss. Noting, however, that the case was not moot (because Brand still could obtain money damages), the judge found that Rule 12(b)(6) supplied a more appropriate basis for dismissal, particularly in light of the defendants' additional challenge to the cognizability of Brand's due process claim. And Brand, the judge concluded, failed to assert a cognizable claim: Even if the procedures were flawed, he was not deprived of any liberty interest because the credits were restored and he never served any additional time.

Brand moved to alter or amend the judgment, *see* FED. R. CIV. P. 59(e), restating the same arguments he made in opposition to the defendants' motion to dismiss. The judge denied the motion.

On appeal, Brand first argues that the judge erred by converting the defendants' motion to dismiss under Rule 12(b)(1) into one under Rule 12(b)(6). But where—as here—a Rule 12(b)(1) motion is an "indirect attack on the merits of the plaintiff's claim," the judge was entitled to look beyond the label of the motion and treat it substantively as if it were a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Peckmann v. Thompson*, 966 F.2d 295, 297 (7th Cir. 1992); *see also Brickstructures, Inc. v. Coaster Dynamix, Inc.*, 952 F.3d 887, 890 (7th Cir. 2020) ("[I]t is the substance of a motion that counts, not its label.").

Brand next asserts that the defendants deprived him of a liberty interest when they revoked his good-time credits[1] without proper procedures. True, good-time credits are statutory liberty interests when awarded, *see Montgomery v. Anderson*, 262 F.3d 641, 644–45 (7th Cir. 2001) (citing *Wolff v. McDonnell*, 418 U.S. 539 (1974)), but here Brand's credits were restored through the prison's administrative appeal process.[2] Because that administrative process "is part of the due process afforded prisoners," no due process violation occurs when the error is corrected during the administrative appeal. *Morissette v. Peters*, 45 F.3d 1119, 1122 (7th Cir. 1995); *see Frank v. Schultz*, 808 F.3d 762, 764 (9th Cir. 2015).

Finally, Brand argues that the district judge erred by denying his motion to amend the judgment. But Rule 59(e) of the Federal Rules of Civil Procedure requires the moving party to demonstrate a "manifest error of law or fact or present newly discovered evidence," and these motions should not be used to repeat previously rejected arguments. *Vesely v. Armslist LLC*, 762 F.3d 661, 666 (7th Cir. 2014). Because Brand merely restated the arguments made in his opposition to the defendants' motion to dismiss (i.e., maintaining that he stated a plausible claim for relief), the judge appropriately exercised his discretion in denying the motion.

AFFIRMED

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[1] Besides good-time credits, Brand asserted that he also was punished with two months' C-grade status, one month segregation, and a disciplinary transfer. But as pleaded, these sanctions do not raise due process concerns under governing case law. *See Thomas v. Ramos*, 130 F.3d 754, 762 n.8 (7th Cir. 1997) (C-grade status); *Lisle v. Welborn*, 933 F.3d 705, 720–21 (7th Cir. 2019) (segregation that did not impose significant or atypical hardships); *Wilkinson v. Austin*, 545 U.S. 209, 221–24 (2005) (liberty interest in avoiding only those transfers that impose atypical or significant hardships).

[2] Brand contests this characterization and asserts that his appeals were denied. But he concedes that, after the initial round of administrative appeals concluded, his good-time credits were fully restored by the director of the Illinois Department of Corrections.