LEXSEE 227 FED. APPX. 138

RICHARD YOUNG, Appellant, v. JEFFREY BEARD, ROBERT BITNER, PHILIP JOHNSON, FRANK COLE, MALCOLM MCCOWN, PAM TEETER, CHARLES J. SIMPSON, CLARENCE W. BLAKEY, WILLIAM BENNETT, RICHARD CULP, SHAWN HOOD, BILL YATES, JOHN YONLISKY, SHAWN SWARTZ, JOHN KRANAK, TONYA EDWARDS, MICHAEL FERSON, M. JAMES MATTHEWS, ED KERN, KOOLIE, ATTORNEY GENERAL OF PENNSYLVANIA

NO. 06-3621

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

227 Fed. Appx. 138*; *2007 U.S. App. LEXIS 6559

March 1, 2007, Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
March 20, 2007, Filed

NOTICE: [**1] NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING PROCEDURE RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND THE COURT.

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: On Appeal From the United States District Court For the Western District of Pennsylvania. (D.C. Civ. No. 03-cv-00551). District Judge: Honorable Joy Flowers Conti.
Young v. Beard, 2006 U.S. Dist. LEXIS 49554 (W.D. Pa., July 20, 2006)

COUNSEL: RICHARD YOUNG, Appellant, Pro se, Fayette SCI, LaBelle, PA.

For JEFFREY BEARD, Commissioner of Corrections-Official-Individual Capacity, ROBERT BITNER, Chief Misconduct Hearing Examiner-Individual Capacity, PHILIP JOHNSON, Superintendent, Individual Capacity, FRANK COLE, Major, Individual Capacity, MALCOLM MCCOWN, Captain, Individual Capacity, PAM TEETER, Captain, Individual Capacity, CHARLES J. SIMPSON, Captain, Individual Capacity, CLARENCE W. BLAKEY, Security Lieutenent, Individual Capacity, WILLIAM BENNETT, Security Lieutenent, Individual Capacity, RICHARD CULP, Restricted Housing Unit Lieutenent, Individual Capacity, SHAWN HOOD, Restricted Housing Unit Sargeant, Individual Capacity, BILL YATES, Inmate Property Sargeant, Individual Capacity, JOHN YONLISKY, Security Officer, Individual Capacity, SHAWN SWARTZ, Security Officer, Individual Capacity, [**2] JOHN KRANAK, Restricted Housing Unit Officer, Individual Capacity, TONYA EDWARDS, Mail Inspector Supervisor, Individual Capacity, MICHAEL FERSON, Disciplinary Hearing Examiner, Individual Capacity, M. JAMES MATTHEWS, Disciplinary Hearing Examiner, Individual Capacity, ATTY GEN PA, Appellees: Kemal A. Mericli, Office of Attorney General of Pennsylvania, Pittsburgh, PA.

For ED KERN, Psyciatrict, Individual Capacity, KOOLIE, Psychiatrist, Individual Capacity, Appellees: Samuel H. Foreman, Weber, Gallagher, Simpson, Stapleton, Fires & Newby, Pittsburgh, PA.

JUDGES: Before: SLOVITER, CHAGARES AND NYGAARD, CIRCUIT JUDGES.

OPINION

[*140] PER CURIAM

Richard Young, an inmate at the State Correctional Institution at Labelle, Pennsylvania, appeals various orders issued by the United States District Court for the Western District of Pennsylvania pertaining to his civil rights complaint. We conclude the appeal is without merit and we will therefore dismiss it under *28 U.S.C. § 1915(e)(2)(B)*.

In 2003, Young filed a complaint asserting numerous constitutional claims against some twenty-one individual defendants, including nineteen Commonwealth employees and two prison psychiatrists [**3] not employed by the Commonwealth. These claims arose from a series of disciplinary actions that took place while Young was incarcerated at the now-closed State Correctional Institution at Pittsburgh. From 2002 to 2003, prison officials filed nine misconduct reports against Young alleging various violations of the prison disciplinary code. Young was found guilty of all but one of the charges, and was sentenced to an aggregate of 930 days in disciplinary confinement. Young alleges that his *First*, *Eighth*, and *Fourteenth Amendment* rights were violated numerous times during the course of these proceedings. He requests monetary relief.

In 2005, the District Court granted a motion for partial summary judgment filed on behalf of the nineteen Commonwealth defendants. [1] In 2006, the District Court granted a motion to dismiss filed on behalf of the two prison psychiatrists. This appeal followed. We have jurisdiction under *28 U.S.C. § 1291*. Because Young is proceeding *in forma pauperis*, we will dismiss the appeal if it lacks an arguable basis in law or fact. *See 28 U.S.C. 1915(e)(2)(B)*; *Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989)*. [**4]

1 The Commonwealth's motion did not address Young's mail confiscation claims, which remained pending until Young voluntarily withdrew them prior to filing the instant appeal.

First, we address Young's claim that prison officials issued false misconduct reports for retaliatory purposes. To state a *prima facie* retaliation claim under *42 U.S.C. § 1983*, a plaintiff must show that he engaged in constitutionally protected activity, that he suffered adverse action at the hands of a state actor, and that the protected activity was a substantial factor in causing the adverse action. *See Carter v. McGrady, 292 F.3d 152, 158 (3d Cir. 2002)*. The retaliation claim fails if the defendants demonstrate "that they would have made the same decision absent the protected conduct for reasons reasonably related to a legitimate penological interest." *Rauser v. Horn, 241 F.3d 330, 334 (3d Cir. 2001)*.

Although Young's complaint does not clearly state the basis for his retaliation [**5] claim, he suggests in his later filings that false reports were issued because he engaged in conduct protected by the *First Amendment*, namely filing administrative grievances and appeals. We conclude, however, that the District Court properly granted summary judgment on this claim because the record shows that each disciplinary charge had an evidentiary basis, and Young has not cited to any evidence undermining the Commonwealth's claim that the challenged conduct was motivated by legitimate concerns.

[*141] Next, Young argues that prison officials violated his *Fourteenth Amendment* due process rights at various stages of the disciplinary proceedings. He claims that the hearing examiner improperly denied his requests to present witnesses at the hearings, and he also challenges the sufficiency of the evidence supporting the hearing examiner's findings of guilt. Young presumes he is entitled to the procedural protections set forth in *Wolff v. McDonnell, 418 U.S. 539, 563-67, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)*, which held that a prisoner facing the deprivation of a constitutionally cognizable liberty interest following an administrative hearing has a due process right to certain procedural [**6] protections, including notice of the charges twenty-four hours prior to the hearing, an opportunity to call witnesses and present documentary evidence, and a statement of the grounds for disciplinary action. However, an inmate's procedural due process rights are not triggered unless the prison "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Mitchell v. Horn, 318 F.3d 523, 531 (3d Cir. 2003)* (quoting *Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995))*. We have held that fifteen months in administrative custody in a Commonwealth prison does not amount to a deprivation of a cognizable liberty interest, *Griffin v. Vaughn, 112*

F.3d 703, 708 (3d Cir. 1997), and it appears from the policy statement attached to the Commonwealth's summary judgment motion that the conditions in disciplinary custody are not substantially different from those experienced by a prisoner in administrative custody. *See also Mitchell, 318 F.3d at 532*, *remanded to 2005 U.S. Dist. LEXIS 8139, 2005 WL 1060658 (E.D. Pa. May 5, 2005)* (noting this similarity). Despite having ample opportunity [**7] to do so, Young has failed to state facts or submit evidence showing that he was subject to conditions in disciplinary confinement that meet the *Sandin* standard. We therefore agree with the conclusion of the Magistrate Judge, as stated in her Report and Recommendation of December 6, 2004, that Young has not shown a deprivation of a cognizable liberty interest.

Young next asserts *Eighth Amendment* claims challenging the conditions of his confinement. He argues his *Eighth Amendment* rights were violated because he was subject to inhumane conditions while confined for several days in an unclean holding cell. This claim fails because Young has not alleged that prison officials acted with deliberate indifference in subjecting him to the challenged conditions. *See Young v. Quinlan, 960 F.2d 351, 359-61 (3d Cir. 1992)*. We also reject Young's claim that placement in disciplinary confinement itself amounted to cruel and unusual punishment. *See Griffin, 112 F.3d at 708*.

The District Court also properly granted the prison psychiatrists' motions to dismiss Young's *Eighth Amendment* claims. Young argues that his *Eighth Amendment* rights were violated by the [**8] psychiatrists' denials of his repeated requests for a transfer from disciplinary confinement. However, "only unnecessary and wanton infliction of pain or deliberate indifference to the serious medical needs of prisoners are sufficiently egregious to rise to the level of a constitutional violation." *White v. Napoleon, 897 F.2d 103, 108-09 (3d Cir. 1990)* (internal citations and quotation marks omitted); *see also Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979)* (holding that failure to treat a prisoner's serious mental or emotional illness may amount to an *Eighth Amendment* violation). As explained by the Magistrate Judge in her Report and Recommendation of June 8, [*142] 2006, this claim is meritless because Young has not alleged facts indicating that he suffered from a serious mental illness when he received treatment from the prison psychiatrists. Nor is it apparent from the complaint that the psychiatrists were aware of such a condition and deliberately disregarded a substantial risk that serious harm would result to Young if he were to remain in disciplinary confinement.

Finally, Young seeks appellate review of various interlocutory [**9] orders issued by the District Court. He appeals the District Court's denial of the motion for default judgment he filed against the Commonwealth defendants. However, we fail to discern any grounds for concluding that the District Court abused its discretion in denying this motion. *See Farzetta v. Turner & Newall, Ltd., 797 F.2d 151, 153 (3d Cir. 1986)*. Furthermore, we reject Young's appeal of the orders denying the motions for default judgment against the prison psychiatrists, because these motions were filed before the defendants were properly served. *See Gold Kist, Inc. v. Laurinburg Oil Co., Inc., 756 F.2d 14, 18-19 (3d Cir. 1985)*. We also conclude the District Court did not abuse its discretion by issuing orders requiring Young to bear the costs of service. Finally, we conclude that Young's appeal of the District Court's denial of his motion for preliminary injunction is without merit.

For the foregoing reasons, we will dismiss the appeal under *28 U.S.C. § 1915(e)(2)(B)*. We deny Appellant's motion for appointment of counsel.