



LEXSEE 194 FED. APPX. 93

FAMOUS B. RHOADES Appellant, v. C/O CARLTON ADAMS; CPL. W. CAMPBELL; SHIFT COMMANDER JOSEPH BELANGER; LT. LARRY SAVAGE, Disciplinary Hearing Officer

No. 06-1495

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

194 Fed. Appx. 93; 2006 U.S. App. LEXIS 22870

**August 17, 2006, Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
September 6, 2006, Filed**

NOTICE: **[**1]** RULES OF THE THIRD CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

PRIOR HISTORY: On Appeal From the United States District Court For the District of Delaware. (D.C. Civil No. 05-cv-0630-KAJ). District Judge: Honorable Kent A. Jordan.

COUNSEL: FAMOUS B. RHOADES, Appellant, Pro se, Delaware Correctional Center, Smyrna, DE.

JUDGES: Before: RENDELL, AMBRO and GREENBERG, Circuit Judges.

OPINION

[*94] OPINION OF THE COURT

PER CURIAM

Famous B. Rhoades appeals the order of the United States District Court for the District of Delaware dismissing his complaint filed against prison officials because it failed to state a claim and was frivolous. In August 2005, Rhoades filed a lawsuit under *42 U.S.C. § 1983* against C.O. Carlton Adams, Adams' supervisor,

Cpl. W. Campbell, and the shift commander at Delaware Correctional Center, Joseph Belanger, alleging that Adams filed a false disciplinary report against Rhoades and that officials in the chain of command permitted this action and failed to correct or discipline Adams for the false report. He also sued Disciplinary Hearing Officer Lt. Larry Savage **[**2]** for denying him the right to confront his accuser or call witnesses at the hearing, and for not allowing him to sign the report box requesting appeal of the adverse decision. The district court dismissed the complaint without prejudice on January 13, 2006. Rhoades timely appealed.

Because Rhoades is proceeding *in forma pauperis*, we must we must analyze his appeal for possible dismissal pursuant to *28 U.S.C. § 1915(e)(2)(B)*. Under *§ 1915(e)(2)(B)*, we must dismiss an appeal if the underlying action (i) is frivolous or malicious, (ii) fails to state a claim upon which relief may be granted, or (iii) seeks monetary damages from a defendant with immunity. An appeal can be frivolous for either legal or factual reasons. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989).

To state a claim for relief under *§ 1983*, a complaint must sufficiently allege a deprivation of a right secured by the constitution. *See Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996). Accepting as true all of the factual allegations in the complaint, as well as all reasonable inferences that can be drawn from them, *see id.*, we agree

with the [**3] district court's conclusion that Rhoades' allegations should be dismissed under § 1915(e)(2)(B). Rhoades alleges that his due process rights were violated when Adams filed a false report alleging that Rhoades slammed Adams' hand in a cell door. He also maintains that Adams' supervisors, Campbell and Belanger, permitted the promulgation of the false disciplinary report. ¹ Rhoades asserts that the hearing officer sentenced him to 15 days in segregation and that his security level classification was upgraded because of the adverse result of the disciplinary hearing. However, these actions do not comprise a due process violation because they do not [*95] rise to the level of an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life," as required under the U.S. Supreme Court's analysis in *Sandin v. Conner*, 515 U.S. 472, 484, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). See *Smith v. Mensinger*, 293 F.3d 641, 653 (3d Cir. 2002) (district court correctly dismissed due process claim where allegation of false disciplinary report resulting in seven months' disciplinary confinement was not sufficient to constitute a due process deprivation [**4] under *Sandin*).

1 Rhoades' allegation that the defendants covered up for each other does not appear to be a separate allegation for conspiracy, but is intertwined with his claim that he was denied due process. To the extent that the district court dismissed it as a separate claim, we agree that

Rhoades did not convincingly allege the violation of his constitutional rights. See *Kalmanovitz v. G. Heileman Brewing Co., Inc.*, 595 F. Supp. 1385, 1400 (D.Del. 1984), *aff'd*, 769 F.2d 152 (3d Cir. 1985).

Rhoades also contends that the hearing officer, Savage, violated his rights to procedural due process by interfering with Rhoades' right to call and confront witnesses at the hearing and by not allowing him to sign the box on the disciplinary decision form concerning his desire to appeal. However, this due process claim is problematic for the same reasons discussed above, because Rhoades has not suffered an atypical and significant hardship, as required under *Sandin*. In any [**5] event, the inmate grievance procedures, in themselves, do not confer a liberty interest protected by the due process clause in the inmate grievance procedures. See *McGuire v. Forr*, 1996 U.S. Dist. LEXIS 3418, 1996 WL 131130 (E.D. Pa. Mar. 21, 1996), *aff'd* 101 F.3d 691 (3d Cir. 1996); see also *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996) (state's inmate grievance procedures do not give rise to liberty interest protected by the due process clause).

We will dismiss this appeal pursuant to 28 U.S.C. § 1915(e)(2)(B)(I). Rhoades' motions for appointment of counsel and for discovery and production of documents will be denied.