

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT  
AT ROANOKE, VA  
FILED

JUL 15 2004

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MAURICE HAWKINS, #242361, )  
Plaintiff, )  
v. )  
M. CANTRELL, )  
Defendant. )

Civil Action No. 7:04-CV-

MEMORANDUM OPINION

By: Hon. Glen E. Conrad  
United States District Judge

Petitioner Maurice Hawkins, a Virginia inmate proceeding pro se, brings this action under the Civil Rights Act, 42 U.S.C. § 1983, with jurisdiction vested under 28 U.S.C. § 1343.

Hawkins claims a violation of the due process clause for failure of the Food Service Department at Red Onion State Prison (ROSP) to follow DOP 601. Specifically, Hawkins appears to argue that he did not receive the mandated extra portions at breakfast and dinner on January 24, 2004, while incarcerated at ROSP. After reviewing the complaint, it is clear that Hawkins's complaint fails to state a claim. Therefore, this court will file and dismiss this complaint without prejudice, pursuant to 28 U.S.C. § 1915A(b)(1).

A petition may be dismissed under 28 U.S.C. § 1915A(b)(1) if it is clear from the petition that the plaintiff is not entitled to relief. To state a cause of action under § 1983, a plaintiff must establish that he was deprived of rights guaranteed by the Constitution or laws of the United States and that this deprivation resulted from conduct committed by a person acting under color of state law. See West v. Atkins, 487 U.S. 42 (1988).

Hawkins alleges that the defendant failed to follow a Department of Corrections regulation (DOP 601), and thus violated the due process clause. The due process clause requires notice and a hearing before the State deprives someone of life, liberty, or property. See U.S. Const. Amend XIV, §1. However, failure of a state to meet the requirement of a state-created

procedural rule does not rise to the level of a violation of the due process clause. See Riccio v. County of Fairfax, 907 F.2d 1459, 1469 (4th Cir. 1990) (holding that “[i]f state law grants more procedural rights than the Constitution would otherwise require, a state’s failure to abide by that law is not a federal due process issue”). Therefore, this court must dismiss Hawkins’s complaint without prejudice for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). An appropriate order will be issued this day.

ENTER: This 15<sup>th</sup> day of July, 2004.

  
UNITED STATES DISTRICT JUDGE