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# IN THE COURT OF APPEALS OF INDIANA

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| SEBASTIAN CHAPMAN, | ) | |
| | ) | |
| Appellant-Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 77A01-0708-CV-355 |
| | ) | |
| J. MULROONY, J. PEMBERTON, | ) | |
| J. HANNISH, and LT. BROUGH, | ) | |
| | ) | |
| Appellees-Defendants. | ) | |

APPEAL FROM THE SULLIVAN CIRCUIT COURT
The Honorable Thomas E. Johnson, Judge
Cause No. 77C01-0311-PL-398

**November 28, 2007**

**MEMORANDUM OPINION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Today we hand down this opinion contemporaneously with Chapman v. McCauley, et al., No. 77A05-0707-CV-00371 (Ind. Ct. App. Nov. 28, 2007). [1] In both cases, appellant-plaintiff Sebastian Chapman is appealing a judgment in favor of various State prison officials regarding his claims for alleged civil rights violations under 42 U.S.C. Section 1983 (Section 1983).

In this case, Chapman appeals the judgment entered against appellees-defendants J. Mulroony, et al. (collectively, Mulroony), alleging that the trial court erroneously determined that he failed to show that he was deprived of his rights under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.[2] Chapman argues, among other things, that Mulroony intentionally classified him as a "no pay" inmate[3] and changed his credit class, which deprived him of credit time. Appellees' App. p. 2-3, 5. Finding no error, we affirm the judgment of the trial court.

## FACTS

Chapman was an inmate at the Wabash Correctional Facility (Wabash), and in June 2002, he was allegedly demoted in "credit class" as a result of a disciplinary proceeding that had occurred while he was serving a sentence for robbery. Id. at 3. On November 24, 2003, Chapman filed a complaint against Mulroony and other Wabash facility personnel, alleging

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[1] The Chronological Case Summary indicates that these matters were consolidated before the trial court. However, a separate judgment was issued in each cause and the two appeals were assigned separate cause numbers.

[2] The Equal Protection Clause provides that "no State shall . . . deny to any persons within its jurisdiction the equal protection of laws." U.S. Const. Amend. XIV, § 1.

that he had been improperly transferred from the level three security complex to the level four facility shortly after Wabash's superintendent was ordered to respond to a petition for a writ of habeas corpus that Chapman had filed. Chapman claimed that once he was transferred to the level four unit, he did not receive any state pay, was unable to enroll in education and vocational programs, and was required to pay for medications, hygiene items, mailing expenses, and photocopies, which denied him the right of access to the courts. Chapman also claimed that Mulroony informed him that he had been returned to credit class one, but his estimated projected release date remained unchanged. Chapman alleged that he was deprived of sixty days of credit time on March 20, 2003, extending his projected release date by forty days. Chapman claimed that his projected release date should have only been extended by thirty days:

> 11. Prior to being reclassified to the level 4 complex intense monitoring program June 10, 2002, counselor were informed [sic] the plaintiff that his commitment for robbery had ended and his commitment for auto theft began on May 10, 2002.
>
> 12. Then June 11, 2002 the plaintiff was informed that the credit-earning class demotion and commissary restriction imposed for a rule infraction guilty verdict involved during his old commitment for robbery would continue although the plaintiff had begun a new commitment.
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> . . .
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> 33. Collectively, the plaintiff was wrongfully deprived of 124 credit days due to the unlawfully invoked credit-earning class demotion at the commencement of his auto theft commitment. The 124 days were from erroneous credit time deprivations. And, initially the plaintiff was deprived of 93 days unlawfully due to the unlawfull [sic] credit-earning class demotion.

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[3] In some instances, inmates are offered "idle pay," which is the only source of income for prisoners who cannot work because of security restraints. Faver v. Bayh, 689 N.E.2d 727, 731 (Ind. Ct. App. 1997).

34. The plaintiff was unlawfully deprived of 217 days altogether.

. . .

CONCLUSION

48. For the foregoing reasons the plaintiff prays this Court grant the relief requested and grant all relief deemed just and proper to ensure that democracy is not crushed in an environment of government action unbridled by law, and to preclude future violations.

Id. at 3, 8, 13.

In October 2004, Chapman filed a motion for preliminary injunction that the trial court later denied. Chapman appealed to this court, and we determined that the trial court erred in failing to make any findings of fact and conclusions of law in denying the motion for preliminary injunction. As a result, we remanded the cause to the trial court. Chapman v. Mulroony, No. 77A01-0412-CV-512 (Ind. Ct. App. Apr. 25, 2005).

Thereafter, on July 19, 2005, Chapman filed additional documents in support of his motion for a preliminary injunction. After hearing argument on the request for preliminary injunction, the trial court denied Chapman's motion on December 12, 2005.

On January 22, 2007, the trial court granted Chapman's motion to submit the instant case via documentary evidence. After Mulroony filed a memorandum in support of defenses, Chapman filed a request to "Submit Affirmation of the Veracity of Statements" and "Applicable Law in Support of Complaint." Appellant's App. p. 13. The trial court denied the motion, and on May 22, 2007, it entered judgment for Mulroony, concluding that Chapman failed to show that Wabash's actions violated his equal protection rights. Chapman

now appeals.

## DISCUSSION AND DECISION

### I. Standard of Review

We initially observe that in reviewing claims that are tried by the bench, we will not set aside a judgment "unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). In determining whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses. Rather, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence. Estate of Reasor v. Putnam County, 635 N.E.2d 153, 158 (Ind. 1994). Additionally, we note that when a trial court's factual findings are based on a paper record, we conduct our own de novo review of the record. Equicor Dev. v. Westfield-Washington Twp., 758 N.E.2d 34, 37 (Ind. 2001). Here, the trial court heard no testimony. Rather, it based its decision on the paper record. Our review is, therefore, de novo. Anderson v. Eliot, 868 N.E.2d 23, 31 (Ind. Ct. App. 2007).

We next observe that Section 1983 creates a species of tort liability in favor of persons who have been deprived of their federal constitutional rights. Cantrell v. Morris, 849 N.E.2d 488, 506 n.26 (Ind. 2006) (citing Carey v. Piphus, 435 U.S. 247, 253 (1978)). Section 1983 permits recovery against individual officers and units of local government, but not against the State itself. Cantrell, 849 N.E.2d at 506 n.26 (citing Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989)). To prevail on a Section 1983 claim, the plaintiff must establish that: (1)

he had a constitutionally protected right; (2) he was deprived of that right in violation of the Constitution; (3) the defendant(s) intentionally caused that deprivation; and (4) the defendant(s) acted under color of state law. McNabola v. Chicago Transit Auth., 10 F.3d 501, 513 (7th Cir. 1993). A claim is stated under Section 1983 only by the deprivation of a right guaranteed by federal law. Albright v. Oliver, 510 U.S. 266 (1994). Moreover, a defendant can be held liable under Section 1983 only for deprivations that he or she personally caused, either by direct action or by approval of conduct of others. Vicarious liability cannot support a Section 1983 claim. Monnell v. Dep't of Soc. Serv's, 436 U.S. 658, 694 (1978). Also, liability can be based only on a finding that conduct causing a constitutional deprivation occurred at the defendant's direction or with his knowledge and consent. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995). Finally, we note that the burden is on the plaintiff to prove the allegations of the complaint in civil actions. Deep Vein Coal Co. v. Dowdle, 33 N.E.2d 981, 985 (Ind. 1941).

## II. Chapman's Claim

Chapman argues that the trial court erred in concluding that he failed to show that Mulroony's actions violated his rights under the Equal Protection Clause. Specifically, Chapman contends that Mulroony's actions denying him state pay and assigning him to a different credit class violated his constitutional rights.

In general, to maintain an action under the Equal Protection Clause, a plaintiff must allege that a defendant intentionally discriminated against him because of his membership in a protected class. Washington v. Davis, 426 U.S. 229, 247-48 (1976). Put another way, the

guarantee of equal protection is a right to be free from invidious discrimination in statutory classifications or other governmental activity. Harris v. McRae, 448 U.S. 297, 322, (1980). This court will uphold a challenged classification if there is a rational relationship between the disparity of treatment and some legitimate government purpose. Heller v. Doe, 509 U.S. 312, 320 (1993).

We also note that some jurisdictions have recognized that a claimant can maintain a "class of one" action when there is no allegation that he was discriminated against based on his race or any other protected class. Lauth v. McCollum, 424 F.3d 631 (7th Cir. 2005). However, in order for a plaintiff to prevail in this type of action, he or she must negate "any reasonably conceivable state of facts that could prove a rational basis for the classification." Id. (citing Bd. of Trustees v. Garrett, 531 U.S. 356, 367 (2001)). Governmental action only fails rational basis scrutiny if no sound reason for the action can be hypothesized. Id.

When a prison regulation impinges on an inmate's constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests and does not represent an exaggerated response to those concerns. Faver, 689 N.E.2d at 730 (citing Turner v. Safley, 482 U.S. 78, 87 (1987)). Finally, we note that a prison inmate must show that the alleged discrimination against him was intentional or deliberate to succeed on an equal protection claim. Id. at 731.

In this case, Chapman does not claim that he was discriminated against on the basis of race or any other protected class; thus, he can only base his claim on the notion that Wabash discriminated against him as a "class of one." Specifically, Chapman maintains that

Mulroony deliberately and wrongfully classified him as an "idle no pay" offender and changed his credit class, which wrongfully deprived him of credit time. Appellant's Br. p. 10-12.

Notwithstanding Chapman's contentions, he did not submit any evidence to the trial court demonstrating that he was entitled to state pay or that his classification of no pay status at Wabash was erroneous. Nonetheless, Chapman relies on Faver for the proposition that he was entitled to relief because he was not treated the same as other inmates at Wabash. In Faver, the plaintiffs were offenders that were housed in the protective custody unit at the Putnamville Correctional Facility. Id. at 728. This court determined that it was a violation of the Equal Protection Clause to provide pay to some offenders confined to the protective custody unit but not to the offenders voluntarily confined in that unit who were similarly situated. Id. at 731. More particularly, we determined that "voluntary [Protective Custody Unit] inmates are entitled to receive 'idle pay' to the same extent that it is provided to the general population and to those inmates involuntarily committed to [the Protective Custody Unit]." Id.

Unlike the circumstances in Faver, Chapman submitted no evidence establishing that he was similarly situated to offenders at Wabash who were receiving state pay. Rather, Chapman only submitted unsupported self-serving statements to the trial court indicating that he should not have been classified as "idle no pay" because he had not refused any work assignments. Appellant's App. p. 5-6. There is no showing that Wabash personnel acted with any discriminatory animus towards Chapman when it classified him as a no pay inmate.

Moreover, Chapman has not shown that the classification of him as a no pay offender was irrational, particularly because he did not have a prison job. Hence, we can only conclude that the trial court properly granted judgment in favor of Mulroony on this claim.

Finally, we reject Chapman's contention that his equal protection rights were violated on the basis that he was deprived of credit time when he was placed in another classification once he began serving a new sentence. In particular, Chapman failed to submit any evidence showing that his sentence was, in fact, extended by a certain number of days or that he was deprived of any credit time. Rather, the evidence that Chapman submitted to the trial court shows that he was placed in credit class two based on a conduct report that he received in May 2002. Appellant's App. p. 53, 61. Thus, Chapman cannot successfully claim that the alleged violations of his constitutional rights were the result of a deliberate act by Mulroony or that Wabash's actions were motivated by some discriminatory animus. Hence, Chapman's equal protection claims fail.

The judgment of the trial court is affirmed.

RILEY, J., and BRADFORD, J., concur.