

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-000763-MR

HENRY GILL

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 98-CI-00187

PHIL PARKER

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: DYCHE, McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Henry Gill is a prisoner who was involved in a fight with another prisoner and placed in the protective custody unit. Gill unsuccessfully requested Warden Phil Parker to release him back into the general prison population or to transfer him to another prison. An inmate has no constitutional right to be housed in a particular security classification or prison, therefore, we affirm.

Henry Gill, an inmate at the Kentucky State Penitentiary, was involved in an altercation with another inmate, Chris Holloway. The incident was investigated and Gill was determined to have been the aggressor. Henry Gill spent time in

segregation, after which it was determined that he could not be returned to the general prison population due to the danger of another conflict with Holloway and other inmates. A classification hearing was held on January 22, 1997, after which Gill was given a choice to move to the administrative control unit or the protective custody (PC) unit. Gill chose the PC unit, but wanted the Classification Committee's decision to reflect that the move was against his will, which was noted.

On July 28, 1998, Henry Gill wrote a letter to Warden Phil Parker requesting to be released from the PC unit back into the general prison population. On August 3, 1998, Parker sent a memo to Gill denying this request. On September 11, 1998, Gill appealed the action of the Classification Committee. The Classification Committee denied the appeal on September 17, 1998, stating that Henry Gill should remain in the PC unit for security reasons.

On December 17, 1998, Henry Gill filed a motion for declaration of rights in Lyon Circuit Court, in which he petitioned the court to grant him declaratory relief by directing that he be placed back into the general prison population, or, alternatively, that he be transferred to another institution. On March 18, 1999, the court entered an order dismissing Gill's action.

Gill argues on appeal that he has a protected liberty interest under the United States and Kentucky Constitutions in remaining in the general prison population. He contends that this liberty interest is created by Kentucky Correctional

Cabinet's Policy and Procedures, Policy Number 10.2, "Special Management Inmates", (C.C.P. 10.2), which outlines policy and procedures regarding moving inmates to special management units. He also contends that the procedures in C.C.P. 10.2 are mandatory and were not followed properly in transferring him to the PC unit, noting in particular that he was denied the opportunity to call witnesses or have inmate legal assistance at his classification hearing. As a result, Gill argues that he was deprived of his constitutionally protected liberty interest to remain in the general prison population without due process of law. We disagree.

The United States Supreme Court has stated that a protected liberty interest "may arise from two sources -- the Due Process Clause itself and the laws of the States." Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 460, 109 S. Ct. 1904, 1908, 104 L. Ed. 2d 506 (1989), quoting Hewitt v. Helms, 459 U.S. 460, 466, 103 S. Ct. 864, 868, 74 L. Ed. 2d 675 (1983). An inmate has no inherent constitutional right to be housed in a particular institution, or to a particular security classification. Beard v. Livesay, 798 F.2d 874, 876 (6<sup>th</sup> Cir. 1986); See, Meachum v. Fano, 427 U.S. 215, 96 S. Ct. 2532, 49 L. Ed. 2d 451 (1976); Moody v. Daggett, 429 U.S. 78, 97 S. Ct. 274, 50 L. Ed. 2d 236 (1976); Montanye v. Haymes, 427 U.S. 236, 96 S. Ct. 2543, 49 L. Ed. 2d 466 (1976). Liberty interests may also be created through state government policy statements or regulations. Bills v. Henderson, 631 F.2d 1287 (6<sup>th</sup> Cir. 1980).

Gill argues that the mandatory language of C.C.P. 10.2 creates such a liberty interest in remaining in the general prison population, of which he cannot be deprived without due process of law. In Mahoney v. Carter, Ky., 938 S.W.2d 575 (1997), the Kentucky Supreme Court held that the policies and procedures promulgated by the Department of Corrections did not create a liberty interest in a particular security classification status. The Court further stated that "[A] prisoner has no inherent right to a particular security classification or to be housed in a particular institution." Id. at 576. See, Beard, 798 F.2d at 876. Accordingly, Henry Gill had no protected liberty interest created by C.C.P. 10.2 in remaining in the general prison population, and the circuit court properly dismissed Gill's action.

Gill also argues that he receives fewer privileges and experiences inferior living conditions in the PC unit than do inmates in the general prison population. In Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 2300, 132 L. Ed. 2d 418 (1995), the Supreme Court held that although liberty interests protected by the Due Process Clause can be created by states through prison regulations, "these interests will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." See also, Rimmer-Bey v. Brown, 62 F.3d 789 (6th Cir. 1995) (holding that for liberty interest to exist, an inmate must prove both mandatory language in a prison regulation and atypical and significant hardship.)

Therefore, we are of the opinion that no liberty interest is created by the less favorable conditions in the PC unit.

Although we have previously stated that the prison regulations promulgated by the Department of Corrections do not create a liberty interest in Gill's remaining in the general population, we will, nevertheless, briefly address Gill's argument concerning the conditions in the PC unit. As a resident of the PC unit, Gill states that he has free time of approximately two hours per day, five days a week, during which time he can take showers, go to the canteen, and have recreation. He further states that he has access to the law library four days a week, and is allowed visitors on weekdays. This is not an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life" which might imply the existence of a protected liberty interest in remaining in the general population. Therefore, Henry Gill has not shown that state prison regulations nor conditions in the PC unit have created a liberty interest in remaining in the general prison population of which he was deprived without due process.

For the foregoing reasons, we affirm the order of the Lyon Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Henry Gill, Pro Se  
Eddyville, Kentucky

BRIEF FOR APPELLEE:

John T. Damron  
Frankfort, Kentucky