

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 0531

AVIS WILLIAMS

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY &
CORRECTIONS

Judgment Rendered: NOV 05 2018

* * * * *

On Appeal from the 19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. 660779

Honorable Todd Hernandez, Judge Presiding

* * * * *

Avis Williams
B.B. Rayburn Correctional Center
Angie, Louisiana

In Proper Person

Debra A. Rutledge
Baton Rouge, Louisiana

Attorney for Appellee,
Louisiana Department of Public
Safety and Corrections

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

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PENZATO, J.

Avis Williams, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment of the district court dismissing his petition for judicial review.¹ For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On March 16, 2017, Mr. Williams was issued a disciplinary report for violating Rule No. 1, Contraband, of the Disciplinary Rules and Procedures for Adult Offenders,² by possessing suboxone. Following a hearing, the Disciplinary Board found him guilty and sentenced him to a transfer to Maximum Custody Level I from Maximum Custody Level II. He appealed the decision to the warden, who found the disciplinary report to be clear, concise, and providing convincing evidence of the violation as charged. The warden further found that the sanction imposed was appropriate and concurred with the decision of the Disciplinary Board. Mr. Williams appealed to the Secretary of the DPSC, who rejected the appeal, finding that Mr. Williams' sentence was not within the specified penalties for an appeal.³

On August 23, 2017, Mr. Williams filed a petition for judicial review wherein he alleged that he was deprived of his constitutional due process rights. In

¹ Although DPSC is not the only named defendant, in accordance with La. R.S. 15:1171, DPSC is the only proper defendant in an administrative appeal filed by a prisoner.

² See LAC 22:I:341(I)

³ The Louisiana Administrative Code, Title 22, Part I, Section 341(H)(1)(c)(vii) provides that the secretary shall only consider appeals of sanctions from decisions of the warden that resulted in an imposed or suspended sentence of one or more of the following penalties:

- (a). forfeiture of good time;
- (b). a custody change from minimum to medium if it involves transfer to another institution;
- (c). a custody change to maximum;
- (d). failure to earn incentive wages.

a recommendation issued by the Commissioner,⁴ the Commissioner noted that the only penalty imposed was a custody change. He therefore concluded that Mr. Williams failed to set forth a substantial right violation and that his suit should be dismissed. The Commissioner alternatively and additionally found that the DPSC's decision on the merits was not arbitrary, capricious, manifestly erroneous or in violation of any of Mr. Williams' statutory or constitutional rights. After a *de novo* review of the record, the district court adopted the reasons of the Commissioner, affirmed the DPSC's decision, and dismissed Mr. Williams' appeal with prejudice. Mr. Williams filed the instant appeal.

LAW AND DISCUSSION

Louisiana Revised Statutes 15:1177 sets forth the appropriate standard of review by the district court, which functions as an appellate court when reviewing DPSC's administrative decisions. Judicial review is mandated to be conducted by the trial court without a jury and must be confined to the record. La. R.S. 15:1177(A)(5). Specifically, the court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative findings are: (1) in violation of constitutional or statutory provisions, (2) in excess of the statutory authority of the agency, (3) made upon unlawful procedure, (4) affected by other error of law, (5) arbitrary or capricious or characterized by abuse of discretion, or (6) manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. La. R.S. 15:1177(A)(9).

The Due Process Clause does not protect every change in the conditions of confinement having a substantial adverse impact on the prisoner. See *Meachum v.*

⁴ The office of the Commissioner of the Nineteenth Judicial District Court was created by La. R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. The Commissioner's written findings and recommendations are submitted to a district judge, who may accept, reject, or modify them. *Hakim-El-Mumit v. Stalder*, 2003-2549 (La. App. 1 Cir. 10/29/04), 897 So. 2d 112, 113 n. 1.

Fano, 427 U.S. 215, 224-25, 96 S. Ct. 2532, 2538, 49 L. Ed. 2d 451 (1976). Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. *Sandin v. Conner*, 515 U.S. 472, 485, 115 S. Ct. 2293, 2301, 132 L. Ed. 2d 418 (1995) (quoting *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 125, 97 S. Ct. 2532, 2537, 53 L. Ed. 2d 629 (U.S. 1977)). Discipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law. *Sandin*, 515 U.S. at 485, 115 S. Ct. at 2301.

In this case, Mr. Williams' custody status classification was denoted as maximum custody prior to the incident for which he was disciplined. Following a hearing, Mr. Williams was convicted of possession of contraband (drugs) and was sentenced to a transfer to Maximum Custody Level I from Maximum Custody Level II. He appealed the decision to the warden, who found that the sanction imposed was appropriate. It is well-settled that a change of custody status is not atypical or a significant hardship in relation to the ordinary incidents of prison life and does not prejudice an inmate's substantial rights. *Robinson v. Rader*, 2014-0333 (La. App. 1 Cir. 11/20/14), 167 So. 3d 780, 781.

In this case, Mr. Williams has failed to show that his transfer to Maximum Custody Level I from Maximum Custody Level II is atypical and a significant hardship in relation to the ordinary incidents of prison life. See *Giles v. Cain*, 1999-1201 (La. App. 1 Cir. 6/23/00), 762 So. 2d 734, 739. As such, we find that Mr. William's change in custody status did not prejudice his substantial rights, and that the district court did not err in dismissing his claim. See La. R.S. 15:1177(A)(9).

CONCLUSION

For the above and foregoing reasons, the January 26, 2018 judgment

affirming the decision of the Department of Public Safety and Corrections and dismissing the suit with prejudice is affirmed. All costs of this appeal are assessed against plaintiff, Avis Williams.

AFFIRMED.