

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES ALI THOMPSON,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED
October 21, 1997

No. 197453
Ingham Circuit Court
LC No. 95-080323-CZ

Before: Michael J. Kelly, P. ., and Reilly and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant summary disposition and dismissing plaintiff's claim brought pursuant to 42 USC 1983 for damages, declaratory relief and injunctive relief following the January 5, 1995 forfeiture of eighty-five days of his prisoner good time credit. We affirm.

Plaintiff first argues that Dennis Straub acted without authority when he ordered the forfeiture of plaintiff's good time credit following plaintiff's conviction of a major misconduct violation for threatening behavior. We disagree. Plaintiff argues that pursuant to MCL 800.33(8); MSA 28.1403(8), administrative code, 1979 AC, R791.5513, and departmental policy directive, 03.01.100 [formerly PD-DWA-45.01], only the warden can order the forfeiture of good-time credits and that Straub was not the warden of the Cotton correctional facility at the time he ordered the forfeiture. Defendant presented evidence that Straub was duly appointed to serve as acting warden of the Cotton facility on March 23, 1994. Plaintiff argues that it was error for the trial court to consider this documentary evidence because an affidavit and memorandum should not be given precedence over a statute, administrative rule or policy directive. However, the trial court did not give this documentary evidence precedence over existing law. Instead, it applied the existing law to the facts demonstrated by the documentary evidence. Plaintiff produced no evidence that Straub had not been properly appointed acting warden on March 23, 1994. As a result, his argument must fail because his good-time credits were forfeited by the warden. The trial court correctly held that there was no genuine issue of material fact and that defendant was entitled to judgment as a matter of law. *Patterson v Kleiman*, 447 Mich 429, 434; 526 NW2d 879 (1994); *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995).

Plaintiff next argues that defendant's motion for summary disposition was "frivolous" and should have been "stricken" by the trial court. We disagree. Defendant's motion met none of the criteria for finding a claim frivolous where defendant ultimately prevailed and plaintiff presented no evidence that defendant had any basis to believe that its position was anything but true or that it had no legal merit. MCL 600.2591(3); MSA 27A.2591(3).

Plaintiff argues last that he was deprived of a constitutionally protected liberty interest without due process of law. We disagree. This Court has held that MCL 800.33(5); MSA 28.1403(5), which provides for the forfeiture of good time credit upon a major misconduct violation, does not violate due process provided a hearing is conducted with regard to the underlying major misconduct charge. *Tessin v Dep't of Corrections (After Remand)*, 197 Mich App 236, 241; 495 NW2d 397 (1992). Plaintiff did not allege or present evidence showing that a hearing was not conducted or was conducted improperly when he was convicted on December 15, 1994 of threatening behavior, the major misconduct charge that was the basis for the forfeiture. In the absence of any allegations of conduct that amounted to a deprivation of constitutional rights, defendant was entitled to judgment as a matter of law. *Patterson supra* at 434; *Bertrand, supra* at 617-618.

Affirmed.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen