

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MAURICE D. RODGERS,

Plaintiff,

v.

PATRICIA GARRO and
JOHN OR JANE DOE,

Defendants.

ORDER

04-C-0798-C

Plaintiff Maurice Rodgers has moved for reconsideration of the December 8, 2004 screening order in this case. In particular, he asks this court to reverse its decision to dismiss a number of persons plaintiff proposed to sue, whose only relationship to the incident giving rise to the complaint was their assignment to review plaintiff's inmate complaint following the incident. With one exception, plaintiff's arguments in support of his motion are frivolous and do not warrant further discussion. The exception is plaintiff's argument that the court should not have granted absolute immunity to those defendants who acted as a disciplinary hearing officer or reviewers of plaintiff's appeals from the officer's finding of guilt. Plaintiff points out correctly that in Cleavinger v. Saxner, 474 U.S. 193 (1986), the

Supreme Court held that members of a federal prison's institution disciplinary committee, who hear cases in which inmates are charged with rules infractions, may be entitled to qualified, but not absolute, immunity from personal damages liability for actions violating the federal constitution.

Plaintiff is correct that prison officials are not entitled to absolute immunity for serving as disciplinary hearing officers or reviewing alleged violations of due process in disciplinary proceedings. In this case, however, the prison officials were dismissed properly because plaintiff failed to state a claim against them upon which relief may be granted. Simply put, plaintiff did not allege that he suffered a violation of his constitutional rights during the disciplinary hearing held on the conduct report issued against him. In his complaint, plaintiff stated that Pulver did not believe him and chose to affirm defendant Garro's charges in the conduct report and that the officials who reviewed plaintiff's appeals refused to overturn Pulver's decision; these allegations suggest at most a disagreement with the validity of the disciplinary decision, which this court will not review.

To the extent plaintiff's complaint could be construed as alleging that Pulver and the defendants who reviewed the disciplinary hearing violated plaintiff's due process rights, it would fail to state a claim because plaintiff did not allege facts from which an inference can be drawn that he had a protected liberty interest at stake requiring procedural due process. A claim that government officials violated due process requires proof of both inadequate

procedures and interference with a liberty or property interest. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). In the prison context, Sandin v. Conner, 515 U.S. 472, 483-484 (1995), holds that liberty interests "will be generally limited to freedom from restraint which . . . imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." After Sandin, protected liberty interests are essentially limited to the loss of good time credits because the loss of such credit affects the duration of an inmate's sentence. Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not allow suit complaining about deprivation of liberty). The ruling of the disciplinary committee that plaintiff submitted with his complaint shows that plaintiff was punished with eight days of adjustment segregation and 180 days of program segregation. Because plaintiff was not placed in segregation for a period exceeding his remaining term of imprisonment, he has not stated a claim against Pulver or the officials who reviewed the disciplinary proceedings upon which relief could be granted.

ORDER

IT IS ORDERED that plaintiff Maurice Rodgers' motion for reconsideration, dkt. #6, is DENIED to the extent that he seeks reversal of the decision to dismiss defendants Tom

Gozinske, Thomas Borgen, John Ray, Larry Jenkins, Richard Raemish and Matthew Frank on the ground that they are entitled to absolute immunity for their respective decisions on plaintiff's inmate complaints. The motion is GRANTED with respect to that portion of the court's December 8 order that granted absolute immunity to defendants Mel Pulver, Tom Gozinske, Thomas Borgen, John Ray and Richard Raemish for their roles as disciplinary hearing officer and officers reviewing plaintiff's appeals from the finding of guilt on conduct report no. 1298937. However, plaintiff is DENIED leave to proceed against these defendants on the ground that he fails to state a claim of denial of due process against them.

Entered this 28th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge