

Smith v. Maschner

United States District Court for the District of Kansas
September 30, 1988, Decided and Filed
No. 84-3283-S

Reporter: 1988 U.S. Dist. LEXIS 11238

JERRY WAYNE SMITH, Plaintiff, v. HERB MASCHNER,
et al., Defendants

Counsel: [*1] Jerry Wayne Smith, Pro Se

Linden Appel, Lansing, Kansas, Larry Cowger, Topeka,
Kansas, John K. Bork, Assistant Attorney General, Topeka,
Kansas, for defendants

Opinion by: SAFFELS

Opinion

MEMORANDUM AND ORDER

DALE E. SAFFELS, UNITED STATES DISTRICT JUDGE

This matter is before the court on plaintiff's and defendants' motions for summary judgment. The court, having examined the materials filed in this case, makes the following findings of fact and conclusions of law.

Findings of Fact

1. Plaintiff filed this action pursuant to 42 U.S.C. §§ 1983, 1985(2) and 28 U.S.C. § 1343(1), (3). He alleges his constitutional rights were violated under the First, Fifth, Eighth, and Fourteenth Amendments of the United States Constitution.

2. Plaintiff was an inmate at all times giving rise to this cause of action.

3. Plaintiff named as defendants Herb Maschner, former Director of the Kansas State Penitentiary ["KSP"], Lansing, Kansas; Dale Bohannon, Deputy Director of Operations at all times relevant to this complaint; Randy Buford, Deputy Director of Programs; Major Kenny Lynch; Captain Dan Pettis; Sergeant Williamson; Sergeant Soper; Sergeant Ralls; CO II Gill; Daniel Young; Sergeant Pat Bradley; Jean Mowery; [*2] and Marilyn Belshe, Infirmary Administrator.

4. Plaintiff alleges that defendants Pettis, Soper, Ralls, Gill and Young violated his civil rights by placing him in administrative segregation in retaliation for pursuing litigation in state and federal court; that defendants testified falsely against him during the disciplinary

hearing; that his good time credits were forfeited; that he was deprived of his legal materials; and that he was prevented from attending a pretrial conference.

5. Plaintiff further alleges that defendant Bradley violated his due process rights on March 11, 1984, and September 13, 1984, by deducting funds without consent from his inmate account; returning legal materials to the vendors and returning Christmas packages from his family without notice and supporting reasons.

6. Plaintiff claims that defendants Maschner and Buford denied his access to the prison library, thereby denying him access to the courts in preparation for his pending litigation.

7. Moreover, plaintiff claims that defendant Mowery opened his mail, including legal correspondence, and returned letters in violation of K.A.R. 44-12-601 of the Kansas Constitution and Bill of Rights.

8. Defendant [*3] Maschner allegedly intervened in defendant Mowery's violations.

9. And finally, plaintiff claims defendants Maschner, Bohannon, Buford, and Lynch failed to act to prevent the alleged constitutional violations and failed to adequately supervise the employees at KSP, personally participating in these violations.

10. Lieutenant Dan Pettis filed a disciplinary report on August 29, 1984, charging plaintiff with a Class II violation of disrespect. K.A.R. 44-12-305. Plaintiff received and signed for a copy of the report. The final hearing was held on September 25, 1984. Plaintiff's motion for appointment of counsel, inmate Art Murley, was denied, and he rejected the Disciplinary Board's offer for representation by Legal Services. He was found guilty, sentenced to serve fifteen (15) days of disciplinary segregation (credit for time already served); and forfeiture of three (3) months of good time credits.

11. Plaintiff was also charged with disobeying orders, Class I, on August 29, 1984. He received the report and requested inmate Art Murley as a substitute for legal counsel. He did not, however, request any witnesses. He was found guilty by the Disciplinary Board on October 9, 1984, and sentenced [*4] to serve ninety (90) days in

disciplinary segregation and to forfeit 120 days of his earned good time credits.

12. A third disciplinary report charging plaintiff with violating K.A.R. 44-12-201, improper registration and use of personal property, Class II, was filed on August 29, 1984. He received the report and requested representation by inmate Murley during his hearing, which was denied. He did not call any witnesses. He was found guilty on September 25, 1984, sentenced to fifteen (15) days of disciplinary segregation and forfeited fifteen (15) days of good time credits.

13. The fourth and final disciplinary report was filed against plaintiff on August 29, 1984, for disobeying orders, Class I, K.A.R. 44-12-304. He requested inmate Murley as a representative, which was also denied, and he did not request any witnesses. He was found guilty, sentenced to ninety (90) days of segregation and received a four (4) month forfeiture of good time credits.

14. On September 21, 1984, plaintiff was charged with a Class II violation of K.A.R. 44-12-601(B), violation of mail regulations. The Board found him guilty and sentenced him to fifteen (15) days of disciplinary segregation, to run concurrently [*5] with a prior sentence. He called inmate Garner as a witness, but he did not request representation upon receipt of the report.

15. On November 5, 1984, W.T. Madden filed a report against plaintiff for having five to six feet of rope made from torn bed sheets in violation of K.A.R. 44-12-208, Class II, misuse of state property. He acknowledged receipt of the report and requested Legal Services for Prisoners, Inc. as counsel. After his hearing on November 30, 1984, he was found guilty and sentenced to seven (7) days of disciplinary segregation, to run concurrently with his present sentence.

16. Plaintiff ordered legal supplies and books without receiving prior authorization. This property was returned to the sender and the cost for their return was deducted from plaintiff's inmate account without giving him prior written notice.

17. Two of plaintiff's letters that were not legal privileged or official were inspected and censored subsequent to his disciplinary infraction for violating mail regulations.

18. Plaintiff was placed in administrative segregation, but he had access to the prison library's law books pursuant to the rules and regulations at KSP. During his time in segregation, [*6] his access to other inmates was substantially restricted.

19. Plaintiff filed a lawsuit in Leavenworth County District Court, No. 85-C-108, regarding disciplinary action

taken against him at KSP and deprivation of his personal property.

Conclusions of Law

A moving party is entitled to summary judgment only when the evidence indicates that no genuine issue of material fact exists. Fed. R. Civ. P. 56(c); Maughan v. SW Servicing, Inc., 758 F.2d 1381, 1387 (10th Cir. 1985). An issue of fact is "material" only when the dispute is over facts that might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The requirement of a "genuine" issue of fact means that the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Id.* Thus, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. *Id.* The court must consider factual inferences tending to show triable issues in the light most favorable to the existence of those issues. United States v. O'Block, 788 F.2d 1433, 1435 (10th Cir. 1986). [*7] The court must also consider the record in the light most favorable to the party opposing the motion. Bee v. Greaves, 744 F.2d 1387, 1396 (10th Cir. 1984), cert. denied, 469 U.S. 1214 (1985). The language of Rule 56(a) mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

I. Disciplinary Action

Plaintiff's main argument and grounds for relief evolve around the disciplinary action taken by defendants on August 29, September 21, and November 5, 1984; namely, that the disciplinary reports were false.

The court finds that plaintiff was adequately afforded his procedural due process rights at the hearing and no constitutional claim is stated. Plaintiff makes conclusory allegations that the information and the testimony given at his hearings were false. He does not state the nature of the alleged inaccuracies. The fact that the Disciplinary Board chose to believe the officer's testimony as opposed to plaintiff's version of the events does not rise [*8] to a constitutional level. The court must afford great deference to prison officials in the formulation of rules and regulations and their application to prisoners. See Bell v. Wolfish, 441 U.S. 520 (1979). Absent an abuse of the discretion granted the prison officials, "courts should not interfere with the internal operation and administration of a prison." Villar v. McManus, No. 82-3077, (D. Kan., unpublished, Feb. 18, 1983). Judicial review of disciplinary decisions is limited to whether there is a

denial of procedural due process or a clear showing of arbitrary and capricious action. See Marchesani v. McCune, 531 F.2d 459 (10th Cir. 1976), cert. denied, 429 U.S. 846; Graham v. Willingham, 384 F.2d 367 (10th Cir. 1967); Rios v. Benson, No. 78-3168 (D. Kan., unpublished, July 13, 1978), aff'd, No. 78-1786 (10th Cir., unpublished, June 4, 1979).

Plaintiff is not entitled to a de novo review of the disciplinary decisions by this court; nor can the court substitute its judgment for that of the Disciplinary Board with respect to the credibility of the evidence presented. Gaffney-Bey v. Carlson, No. 81-3047 (D. Kan., unpublished, Feb. 17, [*9] 1981). The decision must stand if there is "any evidence at all" to support the action taken by the agency. See Inglez v. Warden, U.S. Penitentiary, 687 F.2d 362, 363 (11th Cir. 1982).

Plaintiff has failed to refute the accuracy of the disciplinary reports. Moreover, prison officials, as argued by defendants, should "be free to carry out their duties without apprehension of subsequent damages liability." See, e.g., Briscoe v. LaHue, 460 U.S. 325, 342-43 (1983).

In addition, plaintiff claims that his constitutional rights were violated by the refusal of the hearing officer to permit him to call all the witnesses he requested. Plaintiff has failed to state any grounds to support his contention that failure to produce certain witnesses resulted in an arbitrary or capricious decision or violated his due process rights to a fair hearing. A disciplinary hearing does not have the same constitutional protections as a criminal trial. The Disciplinary Board or hearing officer is vested with broad discretion in determining whether an inmate should be permitted to call witnesses on his behalf. K.A.R. 44-13-405(a).

In regard to plaintiff's disciplinary hearings, he alleges a conspiracy [*10] between defendants Maschner, Bohannon and Buford, depriving him of his due process rights. The court has reviewed the records of the hearings and finds no violation. "The fundamental requirement of due process is the opportunity to be heard and it is an opportunity which must be granted at a meaningful time and in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545, 552 (1965)." Parratt v. Taylor, 451 U.S. 527, 540 (1981). Plaintiff was given written notice of the charges brought against him, a hearing, a written statement outlining the reasons and evidence relied upon for the disciplinary action, and an opportunity to call and cross-examine some of the witnesses requested by him, all in compliance with the requirements set forth in Wolff v. McDonnell, 418 U.S. 539, 563-68 (1974).

In addition, plaintiff's placement in administrative segregation did not exceed the time period specified in the

administrative regulations. Prisoners convicted of Class I offenses may not exceed ninety (90) days (K.A.R. 44-12-1301) and Class II offenders may not exceed fifteen (15) days in administrative segregation. (K.A.R. 44-12-1302.)

II. Inmate Fund

Plaintiff further alleges that his [*11] due process rights were violated by defendant Bradley on March 11 and September 13, 1984, by deducting funds from his inmate account for the costs to return items ordered from a vendor. Section V of General Order No. 9103 provides that an inmate must seek prior approval from the Central Property Office and act upon that approval within ninety (90) days before property may be received and distributed to an inmate. For the same reasons, Christmas packages from plaintiff's family were also returned without notice or reason given to him. Both of these claims are barred since Kansas provides an adequate post-deprivation remedy. Plaintiff availed himself of this procedure by filing an action in the Leavenworth County District Court, Case No. 85-C-108, and the court granted his request for the return of the property. See Parratt v. Taylor, 451 U.S. 527 (1981).

III. Legal Mail

Plaintiff further claims that defendant Mowery opened, inspected, and censored his mail, including that which was legal, personal and privileged. Subsection (i) of K.A.R. 44-12-601 provides that:

All incoming or outgoing privileged mail, other than legal, official or privileged mail, may be inspected at any time. [*12] Such mail may be read and censored only when there is a reasonable belief that there is a threat to institutional safety, order or security, or to the safety and security of public officials or the general public, or when there is reasonable belief the mail is being used in furtherance of illegal activities. Such mail may also be censored if it is obscene and the addressee, or the responsible parent or guardian of an addressee who is a minor, has filed with the principal administrator a written complaint regarding previous correspondence and a request that future correspondence be stopped.

Plaintiff claims that two legal letters, one containing insurance papers regarding his son and the other his son's birth certificate, were open and censored. Neither of these two letters as stated by defendant constitute legal mail. Furthermore, plaintiff was found guilty in a disciplinary action for violating prison mail regulations which gave defendants cause to open and inspect his mail. The court finds no indication that defendant Mowery impinged upon plaintiff's first amendment rights any more than was

necessary to maintain security in the prison setting. *See, e.g., Procunier v. Martinez*, [*13] 416 U.S. 396 (1974).

IV. Loss of Legal Papers and Books

Plaintiff states that he was deprived of legal papers and books on two separate occasions in excess of one month. The constitution only protects plaintiff from the taking of property without due process. As stated in *McMahon v. Carlin*, No. 83-3340, slip op. at 9 (D. Kan., unpublished, Jan. 7, 1987), the availability of grievance procedures and tort remedies against defendants affords plaintiffs the avenues of due process to forestall any constitutional violation. *See Parratt v. Taylor*, 451 U.S. 257 (1981)."

V. Prison Library

Plaintiff claims that he was denied access to the prison library and thereby denied access to the courts while he was in administrative segregation. Admittedly, access to the library or to receipt of books is limited due to an inmate's confinement in segregation. However, plaintiff does not allege that he was denied total access to the library's resources, but as is necessary in a prison environment, he was not given unrestricted access. As such, he has not stated a constitutional violation. *See, e.g., Campbell v. Miller*, 787 F.2d 217 (7th Cir. 1986).

VI. Legal Assistance

Defendants [*14] allegedly restricted plaintiff's right to give legal assistance to other inmates and denied him legal assistance during his disciplinary hearings. First, while K.A.R. 44-12-702 does permit one inmate to give legal assistance to another inmate, without pay, that assistance is

naturally limited by the rules and regulations of the prison, particularly when an inmate is in administrative segregation and does not have access to the general population. Second, while plaintiff was denied appointment of a fellow inmate as his legal representative at his disciplinary hearings, he was offered substitute counsel, which he declined.

VII. Failure to Intervene or to Properly Train

Defendants Maschner, Bohannon, Buford and Lynch purportedly did not adequately train or supervise KSP employees, which resulted in the alleged constitutional violations. Plaintiff has not shown any specific instances where these defendants failed to supervise or train. Moreover, plaintiff has not demonstrated that these defendants "acquiesced in the constitutional deprivations of which complaint is made." *Kite v. Kelley*, 546 F.2d 334, 337 (10th Cir. 1976).

Based on the overall record, the court finds that plaintiff's [*15] motion for summary judgment should be denied and defendants' motion for summary judgment granted.

IT IS BY THE COURT THEREFORE ORDERED that plaintiff's motion for summary judgment be denied. IT IS FURTHER ORDERED that defendants' motion for summary judgment be granted. IT IS FURTHER ORDERED that this action be dismissed and judgment entered in favor of defendants. The clerk of the court is directed to transmit a copy of this Memorandum and Order to plaintiff and to the office of the Attorney General for the State of Kansas.

DATED: This 30th day of September, 1988, at Kansas City, Kansas.