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IN THE COURT OF APPEALS OF INDIANA

SEBASTIAN CHAPMAN,)
)
Appellant-Plaintiff,)
)
vs.) No. 77A05-0707-CV-371
)
STEVE McCAULEY, JAYNE GRIMES, J.)
MULROONY, J. PEMBERTON, TRICIA MAY,)
CRAIG HANKS, and)
LEE HOEFLING,)
)
Appellees-Defendants.)

APPEAL FROM THE SULLIVAN CIRCUIT COURT
The Honorable P.J. Pierson, Judge
Cause No. 77C01-0308-PL-277

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Today we hand down this case contemporaneously with Chapman v. Mulroony, et al., No. 77A01-0708-CV-355 (Ind. Ct. App. Nov. 28, 2007),[1] where, in both cases, appellant-plaintiff Sebastian Chapman is appealing the trial court's judgment in favor of various State prison officials regarding his claims for alleged civil rights violations under 42 U.S.C. section 1983 (Section 1983).

In this case, Chapman appeals the judgment entered in favor of appellees-defendants Steve McCauley, et al. (collectively, McCauley), claiming that he was deprived of due process when he was transferred to a different offender classification at the Wabash Correctional Facility (Wabash) without a hearing. Chapman also asserts that he was treated differently than other inmates within the same classification, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Finding no error, we affirm the judgment of the trial court.

FACTS

Chapman was an inmate at Wabash, where he was assigned to the "G" housing unit. Chapman was classified as a security level four offender based on his conduct, and Wabash has been specifically designated as a security level "3-4 facility." Appellant's App. p. 34, 37. The G housing unit is designed to provide additional structure to certain offenders based on their conduct. Also, that unit is better able to monitor the offenders that are assigned to the level four class.

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[1] The Chronological Case Summary indicates that these matters were consolidated before the trial court. However, a separate judgment was issued in each cause and both are appeals contain separate cause numbers.

On August 26, 2003, Chapman filed a complaint against McCauley and other Wabash facility personnel, alleging that he was transferred from level three housing to a level four housing unit and placed in an incorrect credit class merely because he had filed federal habeas corpus proceedings. In other words, Chapman maintained that the reassignment constituted retaliatory action by McCauley and the other prison officials.

Prior to the reclassification, Chapman had been serving a sentence for robbery at a level three complex; however, when he began serving a new sentence for auto theft, he was transferred to the level four facility. Chapman alleged in his complaint that he was damaged by the transfer and the credit class change because he had fewer privileges in the level four housing unit and received less credit time.

In his request for relief, Chapman requested that conduct report guilty verdicts be expunged and that he be reinstated to credit-class one at Wabash. Chapman also desired a recalculation of credit time, monetary compensation for the alleged theft of his money to pay postage fees while he was indigent, monetary compensation for the alleged theft of his State pay, and punitive damages for the denial of his right to worship.

Thereafter, on December 19, 2006, Chapman filed a request with the trial court for a schedule to submit the case via documentary evidence. The request was granted, and on January 25, 2007, Chapman filed his purported evidence and "applicable law" in support of the specific contentions that he had alleged in the complaint. Appellant's App. p. xvii, 13. Chapman also asserted in these documents that the change in security and credit

classification at Wabash violated his rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution.

On May 22, 2007, the trial court determined that Chapman failed to prove his claims by a preponderance of the evidence and entered judgment for McCauley. Chapman now appeals.

DISCUSSION AND DECISION

I. Standard of Review

We initially observe that in reviewing claims that are tried by the bench, we will not set aside a judgment "unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). In determining whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses. Rather, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence. Estate of Reasor v. Putnam County, 635 N.E.2d 153, 158 (Ind. 1994). Additionally, we note that when a trial court's factual findings are based on a paper record, we conduct our own de novo review of the record. Equicor Dev. v. Westfield-Washington Twp., 758 N.E.2d 34, 37 (Ind. 2001). Here, the trial court heard not testimony. Rather, it based its decision on the paper record. Our review is, therefore, de novo. Anderson v. Eliot, 868 N.E.2d 23, 31 (Ind. Ct. App. 2007), trans. denied.

We next observe that Section 1983 creates a species of tort liability in favor of individuals who have been deprived of their federal constitutional rights. Cantrell v. Morris,

849 N.E.2d 488, 506 n.26 (Ind. 2006) (citing Carey v. Piphus, 435 U.S. 247, 253 (1978)). Section 1983 permits recovery against individual officers and units of local government, but not against the State itself. Cantrell, 849 N.E.2d at 506 n.26 (citing Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989)). To prevail on a Section 1983 claim, the plaintiff must establish that: (1) he had a constitutionally protected right; (2) he was deprived of that right in violation of the Constitution; (3) the defendant(s) intentionally caused that deprivation; and (4) the defendant(s) acted under color of state law. McNabola v. Chicago Transit Auth., 10 F.3d 501, 513 (7th Cir. 1993). A claim is stated under Section 1983 only if it seeks redress for the deprivation of a right guaranteed by federal law. Albright v. Oliver, 510 U.S. 266 (1994). Moreover, a defendant can be held liable under Section 1983 only for deprivations that he or she personally caused, either by direct action or by approval of conduct of others. Vicarious liability cannot support a Section 1983 claim. Monnell v. Dep't of Soc. Serv's, 436 U.S. 658, 694 (1978). Also, liability can be based only on a finding that conduct causing a constitutional deprivation occurred at the defendant's direction or with his knowledge and consent. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995). Finally, we note that the burden is on the plaintiff to prove the allegations of the complaint in civil actions. Deep Vein Coal Co. v. Dowdle, 33 N.E.2d 981, 985 (Ind. 1941).

II. Chapman's Claims

A. Transfer to Unit

Chapman argues that the trial court's judgment for McCauley was erroneous because the evidence established that Chapman's due process rights were violated when he was not afforded a hearing before being transferred to a different security unit at Wabash.

In resolving this issue, we first note that Chapman correctly observes that a prisoner who has been discharged after serving one sentence and begins serving a second consecutive sentence is being "received into" an institution when he has been incarcerated in that institution on a continuous basis. Dunn v. Jenkins, 377 N.E.2d 868, 873 (Ind. 1978). Therefore, Chapman maintains that he was entitled to a hearing in accordance with Indiana Code section 11-10-1-3[2] because, when he began a new sentence for auto theft, he was

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[2] In relevant part, this statute provides that

> (a) upon completion of the evaluation prescribed in section 2 of this chapter and before assigning him to a facility or program, the department shall determine the appropriate degree of security (maximum, medium, or minimum) for each offender as described in IC 35-38-3-6. In making that determination the department shall, in addition to other relevant information, consider:
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> (1) the results of the evaluation prescribed in section 2 of this chapter;
> (2) the recommendations of the sentencing court; and
> (3) the degree and kind of custodial control necessary for the protection of the public, staff, other confined persons, and the individual being considered.
>
> (b) After determining the offender's security classification, the department shall assign him to a facility or program; make an initial employment, education, training, or other assignment within that facility or program; and order medical, psychiatric, psychological, or other services. In making the assignment, the department shall, in addition to other relevant information, consider:
>
> (1) the results of the evaluation prescribed in section 2 of this chapter;
> (2) the offender's security classification[.]
>
> . . .
>
> (d) Before assigning an offender to a facility or program, the department shall give him an opportunity to present pertinent information; discuss with him all aspects of the evaluation, classification, and assignment process; and work with him to determine a fair and appropriate assignment.

I.C. § 11-10-1-3.

considered a "new inmate" for the purposes of classification. Appellant's Br. p. 16-17. However, contrary to Chapman's claims, we note that Indiana Code sections 11-10-1-1 et seq. do not require the Department of Correction (DOC) to provide inmates with a hearing each time they are "received into" the DOC. The statutes in this chapter concern the evaluation, classification, and assignment of criminal offenders, and Indiana Code section 11-10-1-6 merely calls for a periodic review[3] of an offender's classification and assignment. Thus, we cannot say that Chapman's due process rights were violated when he did not receive a hearing prior to beginning his sentence for auto theft.

Finally, we note that contrary to Chapman's contention, the court in Dunn observed that due process protection is required only when an inmate is being demoted to a lower time-earning class or when he is deprived of accumulated good time. 377 N.E.2d at 876. Chapman did not offer any evidence that he was being demoted to a lower time-earning class or was being deprived of any accumulated good time. Instead, Chapman merely alleged that his due process rights were violated when he did not receive a hearing once he began serving the new sentence for auto theft. As a result, Chapman's due process claim fails.

B. Equal Protection Claim

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[3] Indiana Code section 11-10-1-6 provides that "[t]he department shall, at least annually, review, in accord with section 2 and 3 of this chapter, every committed offender not on parole to determine the appropriateness of his current classification and assignment and to make a classification-assignment decision based upon that review."

Chapman argues that his rights under the Equal Protection Clause of the United States Constitution (Equal Protection Clause)[4] were violated. Specifically, Chapman claims that McCauley violated his equal protection rights because he was not treated the same as the other inmates at Wabash.

In general, to maintain an action under the Equal Protection Clause, a plaintiff must allege that a defendant intentionally discriminated against him because of his membership in a protected class. Washington v. Davis, 426 U.S. 229, 247-48 (1976). Put another way, the guarantee of equal protection is a right to be free from invidious discrimination in statutory classifications or other governmental activity. Harris v. McRae, 448 U.S. 297, 322, (1980). This court will uphold a challenged classification if there is a rational relationship between the disparity of treatment and some legitimate government purpose. Heller v. Doe, 509 U.S. 312, 320 (1993). We also note that some jurisdictions have recognized that a claimant can maintain a "class of one" action when there is no allegation that he was discriminated against based on his race or any other protected class. Lauth v. McCollum, 424 F.3d 631 (7th Cir. 2005). However, in order for a plaintiff to prevail in this type of action, he or she must negate "any reasonably conceivable state of facts that could prove a rational basis for the classification." Id. (citing Bd. of Trustees v. Garrett, 531 U.S. 356, 367 (2001)). Governmental action only fails rational basis scrutiny if no sound reason for the action can be hypothesized. Id.

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[4] In relevant part, the Equal Protection Clause provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of laws." U.S. Const. amend. XIV, § 1.

When a prison regulation impinges on an inmate's constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests and does not represent an exaggerated response to those concerns. Faver v. Bayh, 689 N.E.2d 727, 730 (Ind. Ct. App. 1997) (citing Turner v. Safley, 482 U.S. 78, 87 (1987)). Finally, we note that a prison inmate must show that the alleged discrimination against him was intentional or deliberate to succeed on an equal protection claim. Faver, 689 N.E.2d at 731.

In this case, Chapman does not claim that he was discriminated against on the basis of race or any other protected class; thus, he can only base his claim on the notion that Wabash discriminated against him as a "class of one." As noted above, Chapman claimed that he was not receiving the same rights as other inmates. However, Chapman fails to point to any evidence establishing that his rights were being violated and that his treatment was based on this classification. Moreover, the evidence that Chapman did submit regarding the rights that he claimed to be entitled to, such as a certain amount of unencumbered space and a certain amount of exercise time were not shown to be mandated by law. In other words, the incidents of Chapman's incarceration were a direct result of his classification, and Chapman has pointed to no evidence to contradict this other than his self-serving statements that he was entitled to more "out of cell" time. Appellant's App. p. 36.

Moreover, Chapman relies on Faver for the proposition that he was entitled to relief because he was not treated the same as other inmates. In Faver, the plaintiffs were offenders that were housed in the protective custody unit at the Putnamville Correctional Facility. Id. at 728. This court determined that it was a violation of the Equal Protection Clause to

provide pay to some offenders confined to the protective custody unit but not to the offenders voluntarily confined in that unit who were similarly situated. Id. at 731. More particularly, we determined that "voluntary [Protective Custody Unit] inmates are entitled to receive 'idle pay' to the same extent that it is provided to the general population and to those inmates involuntarily committed to [the Protective Custody Unit]." Id.

Unlike the circumstances in Faver, Chapman does not point to any evidence that other level four offenders were, in fact, granted the rights that Chapman claims were denied to him. Indeed, the evidence showed that Chapman was treated according to the standards established for his classification status, and he has pointed to no evidence that other security level four inmates were treated differently. Moreover, contrary to Chapman's contention, there is no evidence indicating that McCauley's actions were motivated by hostility, dislike, or ill will. Rather, as discussed above, the evidence demonstrated that Chapman was a level four security offender and was treated according to the rules and regulations that Wabash imposed for all inmates who were placed in that classification. As a result, Chapman has failed to show that his rights under the Equal Protection Clause were violated.

For all of these reasons, we conclude that the trial court properly granted judgment for McCauley.

The judgment of the trial court is affirmed.

RILEY, J., and BRADFORD, J., concur.