Crowe v. Jones

United States District Court for the Southern District of Alabama, Southern Division
May 13, 1996, Decided ; May 13, 1996, FILED
CIVIL ACTION 96-0214-RV-S

Reporter: 1996 U.S. Dist. LEXIS 8566
BILLY W. CROWE, et al., Plaintiffs, vs. RON JONES, et al., Defendants.

Subsequent History: [*1] Adopting Order of June 4, 1996, Reported at: 1996 U.S. Dist. LEXIS 8567.

Disposition: Dismissed.

Counsel: BILLY W. CROWE, plaintiff, [PRO SE], Atmore, AL. LARRY CHILDS, plaintiff, [PRO SE], Atmore, AL. DAVID BEECH, plaintiff, [PRO SE], Atmore, AL. MICHAEL NELSON, plaintiff, [PRO SE], Atmore, AL. JAMES DILLARD, plaintiff, [PRO SE], Atmore, AL. RICHARD FRAZIER, plaintiff, [PRO SE], Atmore, AL. WILLIAM GATES, plaintiff, [PRO SE], Atmore, AL. ROY HARVELL, plaintiff, [PRO SE], Atmore, AL.

Judges: WILLIAM H. STEELE, UNITED STATES MAGISTRATE JUDGE

Opinion by: WILLIAM H. STEELE

Opinion

REPORT AND RECOMMENDATION

Plaintiffs, Alabama prison inmates proceeding *pro se* and *in forma pauperis,* filed a complaint under *42 U.S.C. § 1983*. This action has been referred to the undersigned pursuant to *28 U.S.C. § 636(b)(1)(B)*, Local Rule 26, and the standing order of general reference. It is recommended that this action be dismissed without prejudice as frivolous, prior to service of process, pursuant to *28 U.S.C. § 1915(d)*.

I. *Complaint's Allegations.*

Plaintiffs filed this *§ 1983* action against Ron Jones, Leslie Thomas, and Jerry Ferrell. Plaintiffs state that their claims are for a violation of the *Eighth Amendment* (Doc. 1). Plaintiffs' claims concern the restrictions placed on their access and use of the hobby shop at Holman Correctional Facility. Plaintiffs contend that the consent decree in *Pugh v. Locke,* 406 F. Supp. 318 (M.D. Ala. 1976), mandated the establishment of a hobby shop at Holman but the spirit and intent of the consent decree is being violated by Defendants in the following ways: (1) Defendants' refusal to let prisoners order materials and [*2] supplies on a regular basis for several months, thereby closing down the hobby shop for three months or longer; (2) Defendants refuse to allow prisoners to send, by mail or otherwise, finished hobby craft except for four items a week to friends and relations and for sending leather goods to companies, thereby denying the use of the hobby shop; (3) Defendants deny a majority of prisoners at Holman hobby shop cards, i.e., only 120 cards are issued when there are 542 prisoners at Holman and there is enough locker space for 240 prisoners' work, which is the number of prisoners who were allowed to have cards two years ago; (4) Defendants close the hobby shop for up to two weeks as group punishment for incidents unrelated to hobby shop activities; (5) hobby shop cards are issued in a selective and a discriminatory manner as informants and favorites are given access to the hobby shop while regular prisoners are denied access to the hobby shop; (6) Defendants restrict orders for hobby shop materials to $ 250.00 a month, which has the effect of prisoners only having enough materials to last one week, which essentially closes down the hobby shop for three weeks out of a month; (7) since Holman [*3] is overcrowded and the prisoners are mostly idle, by placing these restrictions on working in the hobby shop, Defendants are creating an atmosphere of violence, which is what was sought to be alleviated by the consent decree; (8) Defendants are dismantling the minimum *Eighth Amendment* requirements in a variety of ways and in particular, by now taking away a means of income for prisoners by restricting use of the hobby shop; and (9) Defendants only provide one acre for recreation for 542 prisoners, thereby making full utilization of the hobby shop a necessity in order to maintain a safe and violence-free environment at Holman. Plaintiffs seek an order giving all prisoners access to the hobby shop, removing the restrictions, and prohibiting the use of mass punishment.

II. *Frivolity Standards.*

Because Plaintiffs sought leave to proceed *in forma pauperis,* the Court is reviewing Plaintiffs' complaint for frivolity under *28 U.S.C. § 1915(d)*. *Section 1915(d)* "accords judges not only the authority to dismiss [as frivolous] a claim based on indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those [*4] claims whose factual contentions are clearly baseless." *Neitzke v. Williams,* 490 U.S. 319, 327, 109 S. Ct. 1827,

1833, 104 L. Ed. 2d 338 (1989). In other words, "a complaint . . . is frivolous where it lacks an arguable basis in law or fact." *Id*. at 325, 109 S. Ct. at 1831-32. A claim is frivolous as a matter of law where, *inter alia,* the defendants are immune from suit, *id*. at 327, 109 S. Ct. at 1833, the claim seeks to enforce a right which clearly does not exist, *id*., or there is an affirmative defense which would defeat the claim, such as the statute of limitations, *Clark v. Georgia Pardons & Paroles Bd.,* 915 F.2d 636, 640 n.2 (11th Cir. 1990).

III. *Discussion.*

"A successful *section 1983* action requires a showing that the conduct complained of (1) was committed by a person acting under color of state law and (2) deprived the complainant of rights, privileges, or immunities secured by the Constitution or laws of the United States." *Harvey v. Harvey,* 949 F.2d 1127, 1130 (11th Cir. 1992). Plaintiffs have not demonstrated that they have been deprived of a constitutional right.

The Court knows of no constitutional right or liberty interest that requires [*5] an inmate to have access to a hobby shop. Plaintiffs' argument that there has been a violation of the consent order in *Pugh v. Locke, supra,* does not present a claim for a violation of federal right. Judge Varner entered an order and memorandum opinion on December 28, 1988 ruling that the prior injunctions entered in the *Newman v. Alabama* action, 1988 U.S. Dist. LEXIS 18633, Civil Action No. 3501-N, Middle District of Alabama, [1] mandating specific remedial requirements were no longer in effect as of December 3, 1984. (Op., p. 16). Plaintiffs therefore can no longer seek to enforce any provisions of the consent order in Pugh. [2] Furthermore, the Supreme Court in its recent decision in *Sandin v. Conner,* U.S. , 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995), determined that liberty interests, to which due process protections will attach in the future, will be "limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, (citations omitted), nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." 115 S. Ct. [*6] at 2300. [3] The deprivation of access to the hobby shop is not the type of liberty interest that the Supreme Court contemplated recognizing in the future.

"A valid *Eighth Amendment* claim . . [*7] . has two components: (1) an objective component which requires that conditions be 'sufficiently serious,' *Farmer,* U.S. , 114 S. Ct. at 1977; *Wilson v. Seiter,* 501 U.S. 294, 298, 111 S. Ct. 2321, 2324, 115 L. Ed. 2d 271 (1991); and (2) a subjective component which requires that prison officials exhibit 'deliberate indifference' to prisoner health or safety. *Farmer,* U.S. at , 114 S. Ct. at 1977: (citations omitted)." *Jordan v. Doe,* 38 F.3d 1559, 1564 (11th Cir. 1994). To prove the objective component that the condition is sufficiently serious, it must be demonstrated that the complained of condition, at a minimum, deprived the inmate of a "single human need." *Id.* at 1565.

> If the State furnished its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety, so as to avoid the imposition of cruel and unusual punishment, that ends its obligations under Amendment Eight. The Constitution does not require that prisoners, as individuals or as a group, be provided with any and every amenity which some person may think is needed to avoid mental, physical, and emotional deterioration.

[*8] *Newman,* 559 F.2d at 291. The deprivation of access to the hobby shop alone does not deprive an inmate of a single human need and is not an *Eighth Amendment* violation.

Plaintiffs' claims can be categorized into four groups. First, Plaintiffs claim that every inmate is entitled to a hobby shop card. This claim fails as there is not a federal right to have access to a hobby shop, as discussed above. Furthermore, granting only informants and favorites access to the hobby shop does not violate a constitutional right as Plaintiffs have not been discriminated against on the basis of some constitutionally protected interest. *Damiano v. Florida Parole and Probation Comm'n.,* 785 F.2d 929, 932-933 (11th Cir. 1986).

Second, Plaintiffs claim that Defendants are closing down the shop by limiting the amount of materials and supplies

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[1] *Pugh* was consolidated into the *Newman v. Alabama* action. *Newman v. Alabama,* 559 F.2d 283, 287 (5th Cir. 1977), *cert. denied,460 U.S. 1083, 103 S. Ct. 1773, 76 L. Ed. 2d 346 (1983)*.

[2] An examination of the *Pugh* order indicates only that there "shall be space available for inmates to engage in hobbies." *Pugh*, 406 F. Supp. at 335.

[3] The *Sandin* Court ruled that mere placement in disciplinary segregation does not entitle an inmate to due process protections as a liberty interest has not been implicated. *Id.* at 2301. Rather, the Court opined that confinement to disciplinary segregation is a type of discipline that an inmate should expect as an incident to his sentence, and is not an atypical, significant deprivation for which a state would create a liberty interest. *Id.*

that inmates can order and by restricting to whom inmates can send their hobby craft and what type of hobby craft can be sent to whom. Because Plaintiffs have no constitutional right to have access to the hobby shop, the measures that restrict, albeit reduce, the use of the hobby shop, therefore, do not violate a constitutional right.

Third, Plaintiffs [*9] contend that they are being deprived of the right to earn income through the deprivation of their access to the hobby shop. [4] There is no constitutional right or liberty interest under state law for an inmate to earn money from a specific source while incarcerated. *See* Robinson v. Cavanaugh, 20 F.3d 892, 894 (8th Cir. 1994) (no right to prison wages).

Fourth, Plaintiffs assert that the hobby shop has been closed by Defendants for up to two weeks as group punishment for violations unrelated to hobby shop activities. Inasmuch as there is not a constitutional right to have access to the hobby shop, then there is no deprivation of a constitutional right when the hobby shop is closed. In other words, access to the hobby shop is a privilege, and not a right.

IV. *Conclusion.*

Accordingly, the Court finds that there is no violation of the *Eighth Amendment* and there is no liberty interest in having [*10] access to the hobby shop. Due to there being no violation of a constitutional right in this action, it is recommended that this action be dismissed without prejudice as frivolous, prior to service of process, pursuant to *28 U.S.C. § 1915(d)*.

The attached sheet contains important information regarding objections to the Report and Recommendation.

DONE this 13th day of May, 1996.

WILLIAM H. STEELE

UNITED STATES MAGISTRATE JUDGE

MAGISTRATE JUDGE'S EXPLANATION OF PROCEDURAL RIGHTS AND RESPONSIBILITIES FOLLOWING RECOMMENDATION, AND FINDINGS CONCERNING NEED FOR TRANSCRIPT

1. *Objection.* Any party who objects to this recommendation or anything in it must, within ten days of the date of service of this document, file specific written objections with the Clerk of this court. Failure to do so will bar a *de novo* determination by the district judge of anything in the recommendation and will bar an attack, on appeal, of the factual findings of the Magistrate Judge. See *28 U.S.C. § 636(b)(1)(C)*; *Lewis v. Smith,* 855 F.2d 736, 738 (11th Cir. 1988); *Nettles v. Wainwright,* 677 F.2d 404 (5th Cir. Unit B, 1982) (*en banc*). The procedure for challenging the findings and [*11] recommendations of the Magistrate Judge is set out in more detail in Local Rule 26(4)(b), which provides that:

> Any party may object to a magistrate judge's proposed findings, recommendations or report made under *28 U.S.C. § 636(b)(1)(B)* within ten (10) days after being served with a copy thereof. The appellant shall file with the Clerk, and *serve on the magistrate judge* and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the magistrate judge, making his own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

[*12] A Magistrate Judge's recommendation cannot be appealed to a Court of Appeals; only the District Judge's order or judgment can be appealed.

2. *Transcript (applicable Where Proceedings Tape Recorded).* Pursuant to *28 U.S.C. § 1915* and FED.R.CIV.P. 72(b), the Magistrate Judge finds that the tapes and original records in this case are adequate for purposes of review. Any party planning to object to this recommendation, but unable to pay the fee for a transcript, is advised that a judicial determination that transcription is necessary is required before the United States will pay the cost of the transcript.

William H. Steele

UNITED STATES MAGISTRATE JUDGE

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[4] It appears that the hampering of an inmate's ability to earn money underlies most of Plaintiffs' claims.