

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 2542

CARLTON TAYLOR

VERSUS

**CAPTAIN WILLIE THOMAS AND MAJOR LOUIS
STRAND, SUPERVISOR, SECURITY AND DISCIPLINARY
BOARD, LOUISIANA STATE PENITENTIARY**

Judgment Rendered: May 2, 2008

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 546,801, Section 24

Honorable R. Michael Caldwell, Judge Presiding

Carlton Taylor
Angola, LA

Plaintiff/Appellant
In Proper Person

L. Bruce Dodd
Baton Rouge, LA

Counsel for Defendant/Appellee
Richard L. Stalder

BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

Guidry, J. concurs.

*①
W/T*

HUGHES, J.

Appellant, Carlton Taylor, appeals the action of the district court which affirmed the decision of the Disciplinary Board (the Board) that found Mr. Taylor guilty of a violation of Rule #3, Defiance. For the following reasons, we affirm the decision of the district court.

FACTS

Carlton Taylor is an inmate at the Louisiana State Penitentiary in Angola, Louisiana. On April 19, 2006 Captain Willie R. Thomas wrote a disciplinary report which alleged that Mr. Taylor was guilty of violating Rule #3, Defiance, of the Rules and Procedures for Adult Inmates, which are promulgated and recorded in the Louisiana Administrative Code, Title 22, Part I. Specifically, the report alleged that Mr. Taylor stated, "that's the sorry m----- f----- that locked me up the last time I was here," referring to Captain Thomas. Although Mr. Taylor contends that he was not offered a copy of the report, Captain Thomas documented that Mr. Taylor was offered a copy and refused to sign for it.

On April 21, 2006, the Board referred Mr. Taylor to the mental health department for evaluation. On April 24, 2006, the mental health department indicated that Mr. Taylor was competent to participate in the disciplinary process. Mr. Taylor was then brought before the Disciplinary Board for hearing on April 26, 2006. The Board found Mr. Taylor guilty as charged and he was sentenced to a "custody change to maximum (working cellblock) and 26 weeks loss of incentive wages."

Mr. Taylor appealed the Board's decision both to the warden and to the Secretary of the Department of Public Safety and Corrections (the DPSC or the department). Mr. Taylor alleged that: 1) he was not brought before the Board for a hearing or an explanation of the delay within 72 hours, as

required by section A(6) of LAC 22:I.349, and 2) he was not given a copy of the disciplinary report 24 hours before the hearing, as required by section A(8) of LAC 22:I.349. The appeals were denied by both the warden and the Secretary of DPSC.

Mr. Taylor then filed a request for judicial review of the final agency decision, pursuant to LSA-R.S. 15:1177, in the 19th Judicial District Court. On June 18, 2007, the Commissioner issued a recommendation to affirm the decision of the Disciplinary Board.¹ The Commissioner noted in his recommendation that the disciplinary rules require that an inmate charged with a disciplinary violation appear before the Board within 72 hours, and in instances where it is not possible to conduct a full hearing within 72 hours, the inmate must be brought before the Board and informed of the reason for the delay. The Commissioner further noted that the inmate in this case was not brought before the Board within 72 hours. Instead, the case was deferred to the mental health department for an evaluation of Mr. Taylor's mental capacity. The Commissioner recommended, however, that "[t]he Department should not be required to bring an inmate before the Disciplinary Board to explain a delay in the disciplinary process where the inmate's mental capacity is in doubt." Thereafter, on July 17, 2007, a judgment was rendered that affirmed the final agency decision and denied Mr. Taylor's appeal. From that judgment Mr. Taylor appeals and alleges due process violations in the failure of the department to bring him before the Disciplinary Board within 72 hours and in the failure of the department

¹ Because it is an inmate suit, this case was assigned to a commissioner to conduct all proceedings and make a recommendation to the appropriate district court judge. This is the procedure followed by the Nineteenth Judicial District Court to handle the large volume of lawsuits filed by inmates for judicial review of DPSC decisions. See LSA-R.S. 13:713, **Rochon v. Whitley**, 96-0835 (La. App. 1 Cir. 2/14/97), 691 So.2d 189, 194 n.2.

to provide him with a written copy of the disciplinary report at least 24 hours prior to the hearing.

LAW AND ARGUMENT

The Department of Public Safety and Corrections Services has adopted and promulgated rules and regulations for adult inmates sentenced to the Department of Public Safety and Corrections. Those rules and regulations are presently found in LAC Title 22.

I. The 72-hour hearing

A prisoner has certain rights when appearing before the disciplinary board. See LAC 22:I.341, et seq. All rights and procedural requirements must be followed unless waived by the accused. LAC 22:I.349(B).

An inmate accused of a disciplinary violation has a right to a hearing within 72 hours of placement in administrative segregation. LAC 22:I.349. Specifically, LAC 22:I.349(A)16. states, in part, that:

Official holidays, weekends, genuine emergencies, or good faith efforts by the administration to provide a timely hearing are the only exceptions. When it is not possible to provide a full hearing within 72 hours of placement in administrative segregation, the accused must be brought before the board, informed of the reasons for the delay, and be remanded back to administrative segregation or released to his quarters after a date for a full hearing has been set[.]

Although arguably the department's decision to have Mr. Taylor's mental capacity evaluated prior to subjecting him to a disciplinary hearing was made in good faith, the rule is clear that the department was still required to bring Mr. Taylor before the Board to inform him of the reason for the delay of the hearing: "the accused **must** be brought before the Board, informed of the reasons for the delay...". LAC 22:I.349(A)(6). (Emphasis added.) The language is mandatory. Although the written report seems to suggest that a hearing took place on April 21, 2006, the record establishes

and the Commissioner acknowledges that the matter was merely referred to the mental health department on that date and Mr. Taylor was not brought before the Board, as required. Although this assignment of error has merit, we must now look to the appropriate remedy.

Review of the decisions of the DPSC are limited to the issues presented for review and the administrative remedy request filed at the agency level. LSA-R.S. 15:1177(A)5. This court may reverse or modify the department's decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional or statutory provisions.
- (b) In excess of the statutory authority of the agency.
- (c) Made upon unlawful procedure.
- (d) Affected by other error of law.
- (e) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record.

LSA-R.S. 15:1177(A)9.

Mr. Taylor argues that the failure of the department to comply with the rules requiring that he be given a hearing within 72 hours and a copy of the disciplinary report within 24 hours of the hearing equate to procedural due process violations and require that the conviction be reversed and the charges dismissed. However, “[t]he Due Process Clause procedural protections are not triggered by *any* substantial deprivation imposed by prison authorities.” **Giles v. Cain**, 1999-2001 (La. App. 1 Cir. 6/23/00), 762 So.2d 734, 738, **Meachum v. Fana**, 427 U.S. 215, 96 S.Ct. 2532, 2538, 49 L.Ed.2d 451 (1976). “[L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.” **Sandin v. Conner**, 515

U.S. 472, 485, 115 S. Ct. 2293, 2301, 132 L.Ed. 2d 418 (1995) (quoting **Jones v. North Carolina Prisoner's Labor Union, Inc.**, 433 U.S. 119, 125, 97 S. Ct. 2532, 2537, 53 L. Ed. 2d 629 (1977), quoting **Price v. Johnston**, 334 U.S. 266, 285, 68 S. Ct. 1049, 1060, 91 L. Ed. 2d 1356 (1948)). In order to invoke the protection of the Due Process Clause, a prisoner, must show an imposition of an atypical and significant hardship in relation to the ordinary incidents of prison life. **Sandin v. Conner**, 515 U.S. at 483-484.

In the case at hand, Mr. Taylor does not dispute the findings of the Board, but merely the process that was utilized. The disciplinary report was written on April 19, 2006. The matter was deferred to the mental health department on April 21, 2006, and Mr. Taylor was given a full hearing before the Board on April 26, 2006. In the interim, Mr. Taylor was housed in administrative segregation. After the hearing, Mr. Taylor was found guilty and sentenced to a custody change to maximum, working cellblock and 26 weeks loss of incentive pay.

Deferment of an inmate to mental health for evaluation is good cause for failing to hold a full hearing within 72 hours. However, the department is still required to inform the inmate of the reason for the delay in holding the hearing. Although in this case we find that the failure of the department to timely inform Mr. Taylor of the reason for the delay in holding his hearing is a violation, Mr. Taylor has not shown that he suffered an atypical or significant hardship in relation to the ordinary incidents of prison life. He therefore has not proven a substantial interest in being free from either administrative lockdown or maximum security, working cellblock. No relief is warranted.

II. The Disciplinary Report

Louisiana Administrative Code 22:I.349(A)(8) states that, unless waived in writing, accused inmates also have a right to be given a copy of the disciplinary report at least 24 hours before the hearing begins.

In this case, Captain Thomas noted on the report that Mr. Taylor had been offered a copy of the report, but had refused to sign for it. Mr. Taylor, however, contends that he was not offered a copy of the report and alleges that it is common practice for officers to make such notations in lieu of the inconvenience of walking all the way to the inmate in order to actually offer him a copy. While we are concerned with the allegation made by Mr. Taylor, and in another case would remand to take evidence on this issue, we find that even accepting his statements as true, no relief would be warranted in this instance. In this appeal he makes no allegations of error as to the merits of the board's decision, but only as to procedural violations. As more fully discussed above, in order to invoke the protections of the Due Process Clause, Mr. Taylor must show an imposition of an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." **Sandin v. Conner**, 515 U.S. at 484. He has not done so in this case.

CONCLUSION

The decision of the 19th Judicial District Court that upheld the decision of the DPSC is affirmed. All costs of this appeal are to be assessed against appellant, Carlton Taylor.

AFFIRMED.