

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 0944

ELRICK GALLOW

VERSUS

RICHARD L. STALDER, LYNN COOPER

Judgment Rendered: December 23, 2008

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 561,053

Honorable Kay Bates, Judge

Elrick Gallow
Cottonport, LA

In Proper Person
Plaintiff – Appellant

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

JAW
RHB
DMC

WELCH, J.

Elrick Gallow appeals a judgment dismissing his petition for judicial review of a prison disciplinary action. We affirm.

BACKGROUND

On November 13, 2007, Gallow, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department), filed this lawsuit against Richard L. Stalder, the Department's secretary, and Lynn Cooper, the warden at Avoyelles Corrections Center, seeking judicial review of a prison disciplinary decision. In the petition, Gallow made the following allegations: On April 27, 2007, Gallow was struck in the head with a shovel by another inmate while in the prison kitchen. According to an incident report, Gallow and the other inmate were ordered to stop fighting, both refused, and had to be physically separated before they complied. As a result of the incident, Gallow was charged with violating Department Rules #10, simple fighting, and #5, aggravated disobedience. On May 9, 2007, Gallow appeared before the disciplinary board, entered a plea of not guilty, and asserted that his actions were in self-defense. The disciplinary board found Gallow guilty as charged, imposed a punishment of 10 days room confinement, and ordered that he pay restitution in the amount of \$5.00.

Thereafter, the Department accused Gallow of violating Department Rule #30, general prohibited behaviors, after two confidential informants informed the prison officials that Gallow started the fight by calling the other inmate names and telling him that he "looked good." Gallow again appeared before the disciplinary board on May 9, 2007, pled not guilty, and charged that since he had been found guilty of fighting, he should not also be found guilty of starting the fight. The disciplinary board found Gallow guilty and imposed a custody transfer from medium to maximum security. Gallow appealed the decision to the warden and the Department's secretary. At both levels, relief was denied.

Gallow then sought judicial review of the Department's determination that he violated Rule #30, and sought removal of the report from his records. He alleged that his constitutional right to equal protection of the laws had been violated by the Department's abusive decision to convict him for both fighting and starting the fight, charging that no other inmate had ever been convicted of fighting and also starting the fight.

Pursuant to La. R.S. 15:1178, a court is required to conduct an initial screening review of the petition to determine if it states a cognizable claim or if the petition, on its face, is frivolous or malicious, or fails to state a cause of action. In a screening report submitted by the commissioner assigned by the trial court to review this matter, it was recommended that the petition be dismissed on the basis that Gallow failed to assert facts supporting a finding that any type of constitutional violation occurred in connection with the disciplinary action, particularly a violation of equal protection under the law. The commissioner stressed that Gallow was clearly afforded a hearing and an appeal of the ruling to the warden and the Department's secretary. The commissioner further observed that considering the nature of the penalty imposed and the fact that it did not affect the length of Gallow's sentence or present any other drastic departure from expected prison life, Gallow failed to set forth a substantial right violation that would authorize a court to intervene and reverse the Department's decision. Therefore, the commissioner concluded the court lacked authority to review the claims raised based on the allegations made and recommended that the lawsuit be dismissed because it was without a basis in law or fact. The trial court agreed with the screening recommendation and ordered that the appeal be dismissed without service on the Department and at Gallow's cost in accordance with La. R.S. 15:1178, 15:1184-88, and 15:1177(A)(9) for failure to raise a "substantial right" violation.

In order for a district court to modify or reverse a decision of the Department in a prison disciplinary action, a prisoner must demonstrate that his substantial rights were prejudiced by the decision because the administrative findings 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; or (f) manifestly erroneous. La. R.S. 15:1177(A)(9). We find that Gallow's petition does not allege facts sufficient to support his claim that prison officials violated his right to equal protection or abused their discretion by finding him guilty of starting the fight he admitted to participating in. Accordingly, we find that Gallow failed to state a cognizable claim or cause of action for relief that would authorize a court to reverse or modify the disciplinary determination under La. R.S. 15:1177(A)(9). Moreover, we note that it has previously been held that a penalty of a change from medium to maximum custody is not unusual or a significant hardship in relation to the ordinary incidents of prison life and does not prejudice an inmates' substantial rights. See Taylor v. Stalder, 2006-0066 (La. App. 1st Cir. 11/3/06), 941 So.2d 198 (unpublished opinion). See also Parker v. LeBlanc, 2002-0399 (La. App. 1st Cir. 2/14/03), 845 So.2d 445; Lay v. Porey, 97-2903 (La. App. 1st Cir. 12/28/98), 727 So.2d 592, writ denied sub. nom., Lay v. First Circuit Court of Appeal, 99-2720 (La. 3/31/00), 758 So.2d 812.

Under the circumstances of this case, modification or reversal of the disciplinary action was not warranted under the law. Therefore, we affirm the screening judgment of the district court and issue this memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1(B). Costs of this appeal are assessed to appellant, Elrick Gallow.

AFFIRMED.