

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2011 CA 0310**

**ERIC HAYES**

**VERSUS**

**WARDEN GOODWIN, JERRY JAMES M. LEBLANC SECRETARY,  
COL. TOLLIVER**

**Judgment Rendered: SEP 14 2011**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 583,150

Honorable Todd Hernandez, Judge Presiding

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Eric Hayes  
Homer, Louisiana

Plaintiff/Appellant  
In Proper Person

Susan Wall Griffin  
Baton Rouge, Louisiana

Counsel for Defendant/Appellee  
James M. LeBlanc

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**BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.**

*PMC  
JW  
9/20/11*

**McCLENDON, J.**

In this prisoner suit, Eric Hayes, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the DPSC), challenges the judgment of the district court dismissing his petition for judicial review of Disciplinary Board Appeal Number FWADE-2009-81. For the following reasons, we affirm the district court's judgment.

**FACTS AND PROCEDURAL HISTORY**

Hayes, while housed at Catahoula Correctional Center, allegedly violated the Disciplinary Rules and Procedures for Adult Inmates, rules #1 and #3 (Contraband and Defiance). According to the charges, Hayes instigated a physical altercation with the parish facility deputies/employees on May 5, 2009, spraying officers with a fire extinguisher he had taken from a wall, saying it was "a good day to die." Following the incident, Hayes was placed in a holding cell at the parish facility. The record reveals no other details regarding this confinement.

On May 19, 2009, Hayes was sent to the DPSC's Forcht Wade facility and he was placed in administrative lockdown. On May 22, 2009, the disciplinary hearing related to the May 5, 2009 violations was held. At the hearing, Hayes made a motion to dismiss because his hearing was not held within 72 hours of his placement in a holding cell at the local parish facility, allegedly in violation of DPSC's rules. The Disciplinary Board denied Hayes's motion and sentenced him to extended lockdown and forfeiture of 180 days of good time.

Thereafter, Hayes sought review with the DPSC. In seeking review, Hayes did not challenge the penalties imposed by the Disciplinary Board, but asserted that a reversal of the Disciplinary Board's decision was mandatory because the hearing on each violation was held more than 72 hours after he was placed in a holding cell at the parish facility. The DPSC subsequently denied Hayes's appeal, reasoning that the inmate was not bound by the 72-hour rule while he was in transit and that upon reception into the Forcht Wade facility "he was given a timely and complete hearing."

Hayes then commenced these proceedings for judicial review in the district court. Pursuant to the screening requirements of LSA-R.S. 15:1178, the matter was submitted to the commissioner for judicial screening. The commissioner issued a briefing order to the parties. After expiration of the briefing deadlines, the commissioner issued a report on April 16, 2010, noting that the district court, pursuant to LSA-R.S. 15:1177(A)(9) could only reverse or modify the decision if substantial rights of the inmate were violated. Finding no substantial rights violation, the commissioner recommended that the DPSC's decision be affirmed and Hayes's petition for judicial review be dismissed. In accordance with the commissioner's recommendation, the district court affirmed the DPSC's decision and dismissed Hayes's petition.

Hayes has appealed, seeking review of the district court's decision.

#### **DISCUSSION**

The DPSC's rules state that an inmate has a right to a disciplinary hearing within 72 hours of placement in administrative segregation, with the exception of weekends, holidays, and genuine emergencies or when the administration gives a good faith effort to hold the hearing timely. 22 LA ADC Pt I, § 349(A)(6). 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 remanded back to administrative segregation or released to his quarters after a date for a full hearing has been set. 22 LA ADC Pt I, § 349(A)(6).

On appeal, Hayes asserts that the DPSC failed to hold a hearing within 72 hours of the May 5, 2009 violation. Hayes avers that nothing prevented DPSC from holding a hearing within 72 hours after he was placed in a temporary holding cell at the parish facility. Moreover, Hayes avers that DPSC never informed him of the reasons for the delay in holding the hearing.

We note that the 72-hour period does not begin to run until an inmate is placed into administrative segregation. Although plaintiff posits that his placement into a temporary holding area in the local parish facility equates to

administrative segregation as defined in the administrative code, there is nothing in the record to reveal whether the conditions of that confinement met the definition set forth in 22 LA ADC Pt I, § 345. Moreover, the DPSC found that Hayes's confinement in the local parish facility did not meet the definition of "administrative segregation" as defined in the administrative code. Accordingly, Hayes failed to prove that his administrative segregation as defined by § 345 commenced prior to May 19, 2009. As such, we cannot conclude that the DPSC erred in calculating the 72-hour delay from May 19, 2009, when Hayes was transferred to the Forcht Wade facility and placed in administrative lockdown. Likewise, we cannot conclude that the hearing, which was held on May 22, 2009, was untimely.<sup>1</sup>

Even assuming Hayes could establish that his confinement in the parish facility fell within the Department's definition of "administrative segregation," the district court "may reverse or modify [a DPSC] decision only if substantial rights of the appellant have been prejudiced." LSA-R.S. 15:1177(A)(9). Similarly, the Due Process Clause does not protect every change in the conditions of confinement having a substantial adverse impact on the prisoner. **Sandin v. Conner**, 515 U.S. 472, 478, 115 S.Ct. 2293, 2297, 132 L.Ed.2d 418 (1995). To invoke the protection of the Due Process Clause, an inmate must show an atypical and significant hardship in relation to the ordinary incidents of prison life. **Sandin**, 515 U.S. at 483-84. Herein, Hayes has not shown that any of his substantial rights have been violated nor has he suffered an atypical or significant hardship in relation to the ordinary incidents of prison life. See **Taylor v. Thomas**, 2007-2542, p. 3 (La.App. 1 Cir. 5/2/08)(*Unpublished Opinion*). Accordingly, we conclude that the district court did not err in affirming the DPSC's decision and dismissing Hayes's petition for judicial review.

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<sup>1</sup> Hayes does not allege that the hearing did not occur within 72 hours of his placement in administrative segregation at the Forcht Wade facility.

## **CONCLUSION**

The decision of the district court that upheld the decision of the DPSC and dismissed the petition for judicial review is affirmed. All costs of this appeal are assessed against appellant, Eric Hayes.

**AFFIRMED.**