

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 0461

GERALD KELLY

VERSUS

BURL CAIN, WARDEN OF LOUISIANA STATE PENITENTIARY,  
RICHARD STALDER, SECRETARY OF LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY AND CORRECTIONS

**Judgment Rendered:** SEP 23 2008

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Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Suit Number 525,912

Honorable Timothy E. Kelley, Presiding

\* \* \* \* \*

Gerald Kelly  
Angola, LA

Appellant  
In Proper Person

Terri L. Cannon  
Baton Rouge, LA

Counsel for Defendant/Appellee  
Richard Stalder

\* \* \* \* \*

BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

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**GUIDRY, J.**

Gerald Kelly, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment from the district court dismissing his petition for judicial review with prejudice. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

On June 4, 2004, Kelly was issued a disciplinary rule violation report for influencing and coercing inmates in the bible college in violation of Rule #30-H, General Prohibited Behavior, of the Disciplinary Rules and Procedures for Adult Inmates. At that time, Kelly was placed in administrative segregation. Following a hearing before the disciplinary board of the DPSC, Kelly was found guilty of the rule violation and sentenced to a custody change to Camp J-extended lockdown. Kelly appealed the disciplinary board's decision to the Warden, which appeal was denied. Thereafter, Kelly appealed the decision to the Secretary of DPSC, which appeal was also denied.

Kelly filed a petition for judicial review in the Nineteenth Judicial District Court on October 29, 2004. In his petition, Kelly complained that his due process rights had been violated because the disciplinary board failed to evaluate confidential informants' statements, there was a lack of evidence to support the disciplinary charge, and the allegations in the disciplinary report did not constitute a violation of Rule 30-H. The case was submitted to a Commissioner, who issued a recommendation that Kelly's request for judicial review should be dismissed because Kelly failed to allege prejudice to a substantial right. Kelly filed a traversal to the Commissioner's recommendation. In a judgment signed on January 10, 2008, the district court, adopting the Commissioner's report as its reasons, dismissed Kelly's request for judicial review with prejudice based on the

finding that Kelly failed to allege prejudice to a substantial right. Kelly now appeals from this judgment.

### DISCUSSION

Decisions of the DPSC are reviewable by the district court; however, the review is limited to issues presented in the petition for judicial review and the administrative remedy request filed at the agency level. La. R.S. 15:1177A(5). The court may reverse or modify the 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. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

La. R.S. 15:1177A(9).

As stated above, Kelly asserts, among other things, that the contents of the disciplinary report do not evidence a violation of the disciplinary rules and that DPSC's finding of guilt based on this lack of evidence violated his due process rights. The Due Process Clause procedural protections are not triggered by *any* substantial deprivation imposed by prison authorities. Giles v. Cain, 99-1201, p. 5 (La. App. 1st Cir. 6/23/00), 762 So. 2d 734, 738. Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. Discipline

by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law. Giles, 99-1201 at p. 5, 762 So. 2d at 738 (citing Sandin v. Conner, 515 U.S. 472, 485, 115 S. Ct. 2293, 2301, 132 L. Ed. 418 (1995)). 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, 515 U.S. at 484, 115 S. Ct. at 2301.

In the instant case, Kelly was found guilty of violating Rule 30-H and was sentenced to a change in custody to Camp J-extended lockdown on June 18, 2004. Kelly was subsequently transferred to a working cell block on January 12, 2005, and was released to a medium farm line on April 8, 2005. However, Kelly has failed to show that his confinement to Camp J-extended lockdown was an atypical or significant hardship in relation to the ordinary incidents of prison life. Kelly did not establish that his confinement exceeded similar confinements in either duration or degree. As noted by the Commissioner, the disciplinary regulations applicable to Kelly provide that although confinement in disciplinary lockdown might not provide all the privileges and accommodations of general population, confinement in disciplinary segregation “mirrors” the conditions of administrative segregation and protective custody, as the regulations of the DPSC provide for the same conditions and privileges for inmates housed in disciplinary and administrative segregation. See Giles, 99-1201 at pp. 6-7, 762 So. 2d at 739.

Accordingly, from our review of the record, we find Kelly failed to establish that his confinement to Camp J-extended lockdown is an atypical or significant hardship in relation to the ordinary incidents of prison life, and consequently, failed to establish prejudice to his substantial rights. Thus, modification or reversal of the disciplinary action by the DPSC was not warranted under the law. See La. R.S. 15:1177A(9).

## **CONCLUSION**

For the foregoing reasons, we affirm the judgment of the district court. All costs of this appeal are to be borne by the appellant, Gerald Kelly.

**AFFIRMED.**