

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008/CA/0941

KENNETH FRANCIS

VS.

**RICHARD L. STALDER, SECRETARY, DEPARTMENT OF PUBLIC
SAFETY & CORRECTIONS, LYNN COOPER, WARDEN, AVOYELLES
CORRECTIONAL CENTER, BLAINE VILLMARETT, LIEUTENANT
COLONEL, DISCIPLINARY BOARD AND AVOYELLES
CORRECTIONAL CENTER**

JUDGMENT RENDERED: DEC 23 2008

**ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 561,379, DIVISION M, SECTION 26
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA**

THE HONORABLE KAY BATES, JUDGE

Kenneth Francis
Cottonport, Louisiana

Appellant
In proper person

LA Department of Public Safety
And Corrections
Baton Rouge, Louisiana

Attorneys for Defendants/
Appellees
Richard L. Stalder,
Lynn Cooper, and Blaine
Villmaret

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ

McDonald, J.

This is an appeal of a judgment from the Nineteenth Judicial District Court, dismissing a prisoner's suit without service on the Department of Corrections. For the following reasons, we affirm.

Kenneth Francis is a prisoner in the custody of the Avoyelles Correctional Center. In April 2007, a routine search of the cell shared by Francis and Kenneth Jones revealed a piece of hard plastic (artificial glass) sharpened to a point. Both inmates were charged with violation of the prison rule concerning contraband. The charge was the subject of an initial hearing, at which the incident was referred for investigation. The matter was investigated and an investigative report was prepared based on testimony of three confidential informants. On April 27, 2007, a hearing on the charge against Francis was convened.¹ Francis was found guilty of contraband possession. He was penalized by a change in quarters to maximum extended lockdown and placed in isolation for ten days.

After an appeal of the Disciplinary Board action to the Secretary of the Department of Corrections was denied, Francis filed a petition for judicial review pursuant to La. R.S. 15:1177 et seq. In accordance with the procedure required by statute, a Commissioner of the Nineteenth Judicial District Court screened the petition to determine whether it stated a cognizable claim or cause of action, and whether it was frivolous, malicious, or sought damages from an immune defendant. The Commissioner's screening report recommended that the suit be dismissed without service on the Department of Corrections; Francis submitted a traversal of the Commissioner's report. After *de novo* review of the pleadings, Commissioner's report, and traversal, the district court adopted the recommendation of the Commissioner and Francis' suit was dismissed, with

¹The charge against Kenneth Jones was dismissed after a separate hearing.

prejudice and without service on the Department. Francis was assessed with costs. Francis appeals this judgment, alleging three errors by the trial court, all violations of his constitutional right to due process.

Francis contends that due process was violated because (1) the statements of the confidential informants did not establish first-hand knowledge sufficient to establish his guilt; (2) the disciplinary board refused to allow witnesses to appear at the hearing; and (3) these violations were not corrected on appeal. He offers numerous United States Supreme Court cases in support of his contentions.

The United States Supreme Court's most recent review of constitutional due process protections insured to prisoners is *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), which was cited and relied on by the Commissioner in the screening report. Initially, the Court noted that State action taken for a punitive reason, "within the sentence imposed," does not encroach upon a liberty interest guaranteed by the Due Process Clause. *Sandin* 515 U.S. at 482, 115 S. Ct. at 2300. Affirming prior cases² that held the State may create liberty interests that are constitutionally protected, it granted certiorari to reexamine the circumstances under which state prison regulations afford inmates a liberty interest protected by the Due Process Clause.

The *Sandin* analysis reiterated the long-standing recognition that federal courts should "afford appropriate deference and flexibility to state officials trying to manage a volatile environment" and such "flexibility is especially warranted in the fine-tuning of the ordinary incidents of prison life, a common subject of prison claims." Citing *Wolff v. McDonnell*, 418 U. S. 539, 94 S.Ct. 2693, 41 L.Ed.2d 935 (1974), it noted that while prisoners do not shed all constitutional rights at the

² *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2693, 41 L.Ed.2d 935 (1974); *Meachum v. Fano*, 427 U.S. 215, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976).

prison gate, lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a “retraction justified by the considerations underlying our penal system.” It found that the interests afforded due process protection will be generally limited to freedom from restraint that imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. *Sandin*, 515 U.S. at 484, 515 S.Ct. at 2300.

The plaintiff in the *Sandin* case alleged that prison officials deprived him of procedural due process when a disciplinary committee refused to allow him to present witnesses during a disciplinary hearing and then sentenced him to segregation for misconduct. The Court held that the prisoner did not have a protected liberty interest under either the Due Process Clause or the state prison regulations, finding that segregated confinement did not present the type of atypical, significant deprivation in which a State might conceivably grant a liberty interest. It noted that discipline by prison officials in response to a wide range of misconduct falls within expected parameters of sentences imposed by a court of law. *Sandin*, 515 U.S. at 485, 115 S.Ct. at 2301.

In the matter before us, the prisoner was given a hearing and an appeal to the Warden and the Secretary. The penalty imposed was a custody change within a maximum-security prison to extended lockdown and 10 days in isolation. Louisiana Department of Public Safety and Corrections Disciplinary Rules and Procedures for Adult Offenders provide that an offender in extended lockdown should be reviewed for possible release to a less restricted status at least every seven days for the first two months and every thirty days thereafter. It is clear that this custody change was not “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.”

Further, with regard to Francis' allegation of the unconstitutionality of not being allowed to have a witness at his hearing, *Wolff* established that while confrontation and cross-examination are essential in criminal trials where the accused, if found guilty, may be subjected to the most serious deprivations, or where a person may lose his job, they are not rights universally applicable to all hearings. Specifically, it noted that some states allow cross-examination in disciplinary hearings, but the procedure may be curtailed, and the Constitution does not require that prisoners be given the rights of confrontation and cross-examination in disciplinary hearings. *Wolff*, 418 U.S. at 567-568, 94 S.Ct. at 2980.

Francis' allegation that it was not established that the confidential informants' statements were based on first-hand knowledge is also without merit. In *Giles v. Cain*, 99-1201 (La. App. 1st Cir 6/23/00), 762 So.2d 734, a prisoner was confined to extended lockdown after being found guilty of a charge of "threat to security." The incident report submitted at the hearing was based on information from a confidential informant. Giles appealed, alleging that prison officials failed to properly corroborate the information received from the confidential informant, thereby depriving him of a liberty interest protected by due process. In affirming the prison officials' action, this court found that the proper procedure was not followed, but that this failure did not warrant relief because Giles' confinement to extended lockdown was not a liberty interest protected by the Due Process Clause. The *Giles* case controls our result here.

For the foregoing reasons, we agree with the findings of the Commissioner and the trial court that due process was satisfied. The judgment appealed is affirmed and this opinion is issued in compliance with URCA Rule 2-16.1.B. Costs are assessed to Kenneth Francis.

AFFIRMED.