

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 0462

MICHAEL THOMAS

VERSUS

BURL CAIN, WARDEN,
LOUISIANA STATE PENITENTIARY

Judgment Rendered: SEP 19 2008

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 554,661

Honorable William A. Morvant, Judge

* * * * *

Michael Thomas
Angola, LA

In Proper Person
Plaintiff – Appellant

William Kline
Baton Rouge, LA

Attorney for
Defendant – Appellee
La. Department of Public
Safety & Corrections

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

WELCH, J.

The plaintiff/appellant, Michael Thomas, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the Department”) and confined to the Louisiana State Penitentiary in Angola, Louisiana, appeals a judgment of the district court dismissing his petition for judicial review of Disciplinary Board Appeal Number LSP-2007-0141-W and assessing a “strike” against him in accordance with La. R. S. 15:1184-1188. We affirm the judgment in accordance with Uniform Court of Appeal Rules 2-16.2(A)(2), (4), and (5).

On December 7, 2006, the plaintiff was issued a disciplinary report for violating “Rule #3, Defiance.” After a hearing before the Disciplinary Board on January 3, 2007, the plaintiff was found guilty of violating the rule and sentenced to “a custody change to medium.” The plaintiff appealed the decision of the Disciplinary Board to the warden, contending that the reporting officer’s statement was unreliable and that there was insufficient evidence to support a finding of guilt. The warden denied his appeal, and therefore, the plaintiff commenced these proceedings for judicial review in the district court, seeking to have the rule infraction expunged from his institutional record, to be granted trustee status, and to have his court costs paid.

Pursuant to the screening requirements set forth in La. R.S. 15:1178, the matter was submitted to the commissioner for judicial screening prior to service on the defendant. On May 21, 2007, the commissioner issued a recommendation, noting that La. R.S. 15:1177(A)(9) only authorizes the district court to intervene in the Department’s decision if the plaintiff’s “substantial rights” have been violated (or prejudiced). And since the penalty at issue in this case involved neither a forfeiture of good time nor an atypical deprivation of a “substantial right” of the

plaintiff,¹ the commissioner recommended that the plaintiff's action be dismissed for failure to raise a substantial right violation (or state a cause of action) and that the plaintiff be assessed a "strike."² See La. R.S. 15:1187.

After considering the entire record of the proceedings, on June 25, 2007, the district court adopted the commissioner's recommendation and rendered a judgment dismissing the petition without service and without prejudice, dismissing the appeal with prejudice based upon the plaintiff's failure to raise a substantial right violation, and imposing the recommended "strike" against the plaintiff. After a thorough review of the entire record of these proceedings, we find no error in the commissioner's recommendation or in the judgment of the district court. "[T]he 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) (citing **Meachum v. Fano**, 427 U.S. 215, 224, 96 S.Ct. 2532, 2538, 49 L.Ed.2d 451 (1976)). Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. **Sandin**, 515 U.S. at 485, 115 S.Ct. at 2301. Discipline by prison officials in response to a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law. *Id.*

In this case, the imposition of the penalty of a change in security from minimum to medium within a maximum security prison, was not atypical or a significant hardship in relation to the ordinary incidents of prison life. Thus, the

¹ See e.g., **Sandin v. Conner**, 515 U.S. 472, 486-87, 115 S.Ct. 2293, 2301-02, 132 L.Ed.2d 418 (1995) (a prisoner's discipline in segregated confinement neither presents an atypical, significant deprivation of a liberty interest nor affects the duration of the inmate's sentence).

² The commissioner reasoned that in cases such as this, where the potential punishment only affects a custody classification and not the prisoner's eventual release or other drastic departure from expected prison life, due process merely requires that the prisoner be allowed to give his version of the incident. Since the pleading filed by the plaintiff reflected that the plaintiff was afforded a hearing on the disciplinary report issued to him and failed to allege that the penalty imposed by the Disciplinary Board constituted an atypical deprivation of a substantial right, the penalty imposed was not subject to review by the district court.

imposition of this penalty did not violate the plaintiff's constitutional rights and did not afford him "a protected liberty interest that would entitle him to . . . procedural protections." **Sandin**, 515 U.S. at 487, 115 S.Ct. at 2302; see also **Parker v. Leblanc**, 2002-0399, p. 2 (La. App. 1st Cir. 2/14/03), 845 So.2d 445, 446; **Giles v. Cain**, 99-1201, pp. 4-7 (La. App. 1st Cir. 6/23/00), 762 So.2d 734, 738-739; **Davies v. Stalder**, 2000-0101, pp. 3-4 (La. App. 1st Cir. 6/23/00), 762 So.2d 1239, 1241.

Therefore, the judgment of the district court is hereby affirmed in accordance with Uniform Court of Appeal Rules 2-16.2(A)(2), (4), and (5).

All costs of this appeal are assessed to the plaintiff/appellant, Michael Thomas.

AFFIRMED.