

STATE OF MICHIGAN  
COURT OF APPEALS

---

STANLEY BOSWELL,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT  
OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

August 6, 1996

No. 178802

LC No. 94-2558 CZ

---

Before: Marilyn Kelly, P.J., and MacKenzie and R.J. Ernst\*, JJ.

MEMORANDUM.

Plaintiff inmate appeals as of right from the circuit court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(8). The order dismissed plaintiff's 42 USC 1983 action seeking injunctive relief and money damages to compensate plaintiff for alleged violations of his right to equal protection. We affirm.

This Court reviews de novo a trial court's determination concerning a motion for summary disposition. A motion for summary disposition under MCR 2.116(C)(8) tests the legal basis of the complaint. *Radkte v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). Taking the factual allegations of the complaint as true, the motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992).

Plaintiff's claim that he was denied equal protection because, while housed in administrative segregation, he was not allowed to order food from the prison commissary, is without merit. Nothing in either Department of Corrections rule cited by plaintiff states that a prisoner's right to access to the commissary includes the right to order food items out of it. Furthermore, plaintiff failed to allege facts showing that it was administratively feasible for the Department to allow such a privilege pursuant to

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

Policy Directive 04.05.120(A). Therefore, since plaintiff failed to establish a legal basis to support his claim, summary disposition was proper. *Radkte, supra*, p 374.

Plaintiff next argues that the Department's denial of cable television to him while he was housed in administrative segregation violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Policy Directive DWA-64.01 [now PD-03.03.135.] Plaintiff alleges that because prisoners housed in the general population are allowed cable television, defendant's action of depriving administrative housing prisoners of such a right is discriminatory because it treats similarly situated individuals differently. We disagree. First, inmates are placed in administrative segregation *because* they are different from the general prison population. Second, the policy directive plaintiff refers to prohibits discrimination against prisoners on the basis of race, religion, ethnic background, sex, or national origin, none of which apply to plaintiff's claim regarding cable television. Because plaintiff failed to set forth a legal basis for this claim, summary disposition on this issue was also proper.

Affirmed.

/s/ Marilyn Kelly

/s/ Barbara B. MacKenzie

/s/ Richard J. Ernst