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Gray v. Lynch Respondent's Brief Dckt. 39604

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IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM GRAY,)
)
 Petitioner-Appellant,)
vs.)
)
SGT. KRISTI LYNCH AND)
WARDEN TEREMA)
)
 Respondents.)
)
_____)

Case No. 39604-2012

RESPONDENTS' BRIEF

Appeal From the District Court of the
Second Judicial District of the State of Idaho,
In and For the County of Clearwater

HONORABLE MICHAEL J. GRIFFIN
DISTRICT JUDGE, PRESIDING

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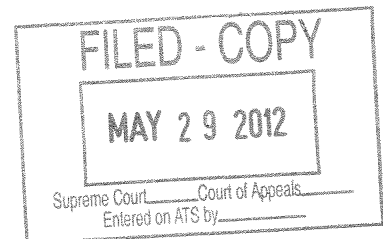


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STATEMENT OF THE CASE

A. Nature of the Case

The Appellant (“Gray”) is a pro se incarcerated inmate. He appeals the district court’s decision dismissing his Petition for Writ of Habeas Corpus.

B. Statement of Facts

Gray was incarcerated at the Idaho Correctional Institution-Orofino (“ICI-O”) in protective custody. This case arises out of a disciplinary infraction he received for theft of another inmate’s commissary items valued at less than \$25.00, the conduct of the subsequent disciplinary hearing, the resulting sanctions and his conditions of confinement while in level 1 of the protective custody unit.

On or about July 22, 2011, Gray was observed taking a bag of commissary items from a day room table. (R. 00000048). When confronted by Corporal Wolff, Gray initially denied taking the bag. However, a short time later Gray returned a number of items that were in the commissary bag to Corporal Wolff. (R. 00000048). Corporal Wolff viewed the unit video tape during the relevant time and determined that Gray did, in fact, take a bag of commissary items belonging to another inmate from the day room and transport them to his cell. (R. 00000048). Corporal Wolff then compared the items returned by Gray with the receipt for the order provided by the commissary provider. Corporal Wolff determined that items totaling \$17.12 were missing. (R. 00000048).

Corporal Wolff’s report formed the basis of a Disciplinary Offense Report issued on July 22, 2011. (R. 00000043). A disciplinary hearing was held on August 4, 2011. The hearing officer was defendant Sgt. Kristi Lynch. (R. 00000043). Gray denied the allegations. Based on the video surveillance showing Gray committing the theft and the

report of Corporal Wolff, Sgt. Lynch confirmed the charges. (R. 00000043). She sanctioned Gray to seven days punitive detention and ordered him to pay restitution in the amount of \$17.12. (R. 00000044). A record of the hearing was reviewed by the Deputy Warden. Gray appealed. Sgt. Lynch's decision was upheld by defendant Warden Terema Carlin who determined that the "some evidence" requirement for a finding of guilt had been met and affirmed the decision. (R. 00000044).

Gray served his detention time on Unit A-3, which also housed Protective Custody Level 1. Protective Custody at Orofino is divided into Level 1 and Level 2 with Level 1 being more restrictive. Mr. Gray was housed at Level 1 due to his behavior problems, which included illicit sexual activity, fighting and the theft. (R. 000000173).

C. Procedural History

Gray filed his Petition for Writ of Habeas Corpus on September 8, 2011. (R., 00000003-81.) The Respondents filed a Response and Motion for Summary Judgment on November 22, 2011. (R. 00000162-176). Gray filed his Response on November 29, 2011. (R. 00000185). The district court issued its Order Dismissing Petition for Writ of Habeas Corpus on December 23, 2011. (R. 00000202-206). Gray timely appealed.

ISSUES

Gray asserts six issues on appeal as follows:

1. "Does an uncontroverted allegation that a prisoner was confined in a cell full of fecal matter for days, weeks create an "atypical and significant hardship that can invoke a liberty interest, therefore due process protections?"
2. "Does lack of toilet paper to the extent that it causes intestinal problems requiring medical attention create an "atypical and significant hardship."
3. "Does a condition/practice that is forced on only one group of restrictive housing inmates and not general population inmates within the entire IDOC create an "atypical and significant hardship?"

4. “Is the fact that appellant’s segregation exceeded that of Schevers under conditions much worse create a genuine issue of material fact?”
5. “Do Idaho state prisoners have a right to substantive due process?”
6. “Does a case involving an incarcerated person’s property in conjunction with disciplinary proceedings require greater due process protections, since the case involves property and confinement?”

(Appellant’s brief, pp. 2-3)

The state rephrases the issues on appeal as follows:

1. Did the district court abuse its discretion in dismissing Gray’s Petition for Writ of Habeas Corpus upon a finding that he failed to state a due process claim involving his prison disciplinary hearing?
2. Did the district court abuse its discretion in dismissing Gray’s Petition for Writ of Habeas Corpus upon a finding that his conditions of confinement did not violate his state or federal constitutional rights?

ARGUMENT

I.

Gray Has Failed To Establish That The District Court Abused Its Discretion In Dismissing The Petition For Writ of Habeas Corpus

A. Introduction

Gray appeals the District Court's Order Dismissing Petition for Writ of Habeas Corpus. At the outset however, a review of the District Court's decision (R. 00000202-05) as well as a review of Gray's original petition (R. 0000003-40) reveals that three of the issues Gray attempts to present on appeal were not raised below. Specifically, what he designates as issue No. 3 (whether the difference in the conditions of confinement between restrictive housing and general population implicates the due process clause); issue No. 4 (whether his alleged segregation time exceeded that in *Schevers* which creates a genuine issue of material fact precluding summary judgment) and issue No. 6 (whether a property claim as part of a prison disciplinary action implicate enhanced due process protections). However, because none of those issues were raised below, they cannot be considered in this appeal. *Abolafia v. Reeves*, --- P.3d ----, 2012 WL 1434340, *6 (Idaho, 2012) citing *Houston v. Whittier*, 147 Idaho 900, 911, 216 P.3d 1272, 1283 (2009) ("This Court will not consider issues raised for the first time on appeal.")

B. Standard Of Review

The decision to issue a writ of habeas corpus is a matter within the discretion of the District Court. *Johnson v. State*, 85 Idaho 123, 127, 376 P.2d 704 (1962). In reviewing the exercise of discretion in a habeas corpus proceeding, the reviewing court conducts a three-tiered inquiry to determine whether the lower court rightly perceived the issue as one of discretion, acted within the boundaries of such discretion, and reached its decision by an

exercise of reason. *Brennan v. State*, 122 Idaho 911, 914, 841 P.2d 441 (Ct. App. 1992); *Sivak v. Ada County*, 115 Idaho 762, 763, 769 P.2d 1134 (Ct. App. 1989). The Petitioner has the burden of establishing that his Petition was denied in error. *Brennan*, 122 Idaho at 914. If a petitioner is not entitled to relief on a petition for a writ of habeas corpus, the decision of the lower court to dismiss the petition without an evidentiary hearing will be upheld. *Id.* at 917.

Additionally, the Idaho Rules of Civil Procedure are applicable to habeas corpus proceedings. *Sivak v. Ada County*, 118 Idaho 193, 795 P.2d 898 (Ct. App. 1990); Idaho Code § 19-4208. “The standard for reviewing a dismissal for failure to state a cause of action pursuant to I.R.C.P. 12(b)(6) is the same as the standard for reviewing a grant of summary judgment.” *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 398, 987 P.2d 300 (1999). If a court considers matters outside the pleadings in ruling on a habeas corpus petition, it will be treated as a motion for summary judgment. *Merrifield v. Arave*, 128 Idaho 306, 307, 912 P.2d 674 (Ct. App. 1996). The standard for summary judgment is as follows:

When the Supreme Court reviews a district court’s decision on summary judgment, it employs the same standard as that properly employed by the trial court when originally ruling on the motion. *Thompson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 529, 887 P.2d 1034, 1036 (1994). Summary judgment is proper “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). Finally, this Court liberally construes all disputed facts in favor of the non-moving party, and will draw all reasonable inferences and conclusions supported by the record in favor of the party opposing the motion. 126 Idaho at 529, 887 P.2d at 1036.

McKay v. Owens, 130 Idaho 148, 152, 937 P.2d 1222 (1997).

C. The District Court Exercised Proper Discretion When It Found That Gray Failed To State A Due Process Claim

The district court perceived the issues raised by the Petition as ones of discretion. It acted within the boundaries of such discretion, and reached its decision by an exercise of reason. *Brennan v. State*, 122 Idaho 911, 914, 841 P.2d 441 (Ct. App. 1992); *Sivak v. Ada County*, 115 Idaho 762, 763, 769 P.2d 1134 (Ct. App. 1989). Gray, on the other hand, fails to point to any error supported by the record made by the district court.

Habeas Corpus petitions in Idaho are governed by the “Idaho Habeas Corpus and Institutional Litigation Procedures Act” found at Idaho Code § 19-4201 *et. seq.* As noted by the District Court, the petition must be verified by oath and is limited to allegations of any of five enumerated federal or state constitutional violations. Idaho Code § 19-4205(2).

The district court properly inquired into two areas where Gray alleged that his constitutional rights had been violated subsequent to his disciplinary infraction for the theft of another inmate’s commissary. The district court correctly refused to inset its judgment in place of the hearing officer by addressing the merits of the hearing, but it did examine Gray’s alleged flaws with the hearing process. The court focused its attention on the alleged prejudice of the hearing officer, the lack of assistance of a staff advisor and that the Gray was given three witness statement forms instead of four. (R. 00000203).

As to the allegation that the hearing officer was biased, the district court found that the fact that Gray was suing the hearing officer was not a *per se* basis for finding prejudice. In dismissing this claim the district noted that Gray did not provide additional facts to support his claim. (R. 00000203).

Concerning Gray’s complaint that the staff advisor was ineffective, the district court dismissed this claim on the basis that Gray did not provide any factual basis for this

conclusion. (R. 00000203). Without evidence, dismissal was entirely reasonable. Finally, regarding Gray's complaint that he received only three witness forms instead of the four allowed by policy the district court found this to be inconsequential as Gray submitted no witness statements at the hearing. (R. 00000203).

In a proper exercise of discretion, based on the review of the evidence before it taken in the light most favorable to Gray, the district court concluded "that the petitioner's constitutional rights and protections were not violated in his disciplinary hearing." (R. 00000203). Gray has failed to establish an abuse of discretion.

D. The District Court Exercised Proper Discretion When It Found That Gray's Rights Where Not Violated By The Conditions Of His Confinement While In Segregation.

Gray also raised the claim that the conditions of confinement while he was housed in detention and subsequently while housed in level 1 protective custody, violated his constitutional rights triggering the protections of the due process clause. He cites *Austin v. Wilkinson*, 545 U.S. 209, 125 S.Ct. 2384 (2005) in support of his position that conditions at ICI-O rise to an atypical and significant deprivation triggering due process protections. *App. Brief, p. 12.*

Gray's reliance on *Austin* is misplaced. *Austin* teaches that placement in the highly controlled conditions of confinement at the Ohio State Penitentiary, a Super Max facility where inmates are deprived of almost any environmental or sensory stimuli and of almost all human contact implicates due process protections. Placement at the Ohio facility was for an indefinite period, limited only by an inmate's sentence. Inmates otherwise eligible for parole lost their eligibility while incarcerated at the facility.

In contrast Gray's stay in detention was for seven days and his placement in protective custody level one was about fifty days more. The conditions which Gray

complains of are *de minimus* in comparison to those at the super-max facility described in *Austin*.

In this case, Gray raised seven discrete areas where he alleged that the conditions of confinement were so onerous that his constitutional rights were violated. The areas, as enumerated by the District Court, included: 1) unclean cell due to other prisoner housed above him putting excrement into the ventilation system; 2) lack of cleaning supplies; 3) insufficient amount of toilet paper; 4) lack of soap in his cell; 5) unclean clothes supplied by prison staff; 6) no religious advisor to help him understand the bible he was provided; and 7) all prisoners on the protective custody unit being required to wear pink clothing. (R. 00000203).

Idaho Code § 19-4206(2) requires as a condition precedent for a state prisoner filing a habeas corpus petition to submit evidence at the time of filing that he exhausted his administrative remedies as to all issues raised in the petition. Gray attached evidence of exhaustion only for: 1) unclean cell due to other prisoner housed above him putting excrement into the ventilation system; 2) lack of cleaning supplies, and; 3) lack of soap in his cell. The district court correctly dismissed the remaining claims for Gray's failure to exhaust administrative remedies prior to filing suit citing Idaho Code § 19-4206(2). (R. 00000204).

The district court found that none of Gray's remaining claims rose to a constitutional deprivation. In disposing of these claims the district court viewed the evidence in light most favorable to Gray finding that he was a protective custody inmate who was placed in detention for the theft of another inmate's property. Furthermore, the district court determined that, "The conditions of Mr. Gray's detention and protective

custody do not constitute an atypical and significant deprivation when compare to the conditions of confinement in the general prison population.” (R. 00000204).

Regarding Gray’s placement in a cell where another prisoner subjected him to excrement, the district court reasoned that Gray’s cell was the only one available at the time and that he was moved at his request when another cell became available. Gray does not allege that the exposure caused him injury. In other words, the district court concluded that to the extent a problem existed, prison staff acted appropriately to alleviate the problem in a timely manner. (R. 00000204).

Concerning Gray’s insufficient cleaning supplies and lack of soap claims, the district court considered Gray’s assertions juxtaposed to the testimony of Sgt. Ben Gunn, the unit sergeant at the time. Gunn testified that cleaning tools and supplies were provided in the unit on a weekly basis. When disinfectant and glass cleaner was empty, it was the unit janitor’s responsibility to refill the bottles. Inmates on the unit could request refills from unit staff. (R. 00000174).

In finding that these claims did not constitute an atypical and significant hardship, the district court found that Gray was provided with cleaning supplies similar to those supplies provided to the general population and that while soap in his cell might provide proper hygiene, Gray did not provide evidence that he was treated in a different manner than anyone else. (R. 00000204).

In exercising its discretion in finding no constitutional violations the district court noted that it appeared Gray offended other prisoners in the past which was likely the reason for his protective custody status. The district court concluded that prison staff reasonably responded to Gray’s concerns.

CONCLUSION

Based on the foregoing reasons and well settled Idaho law, the district court did not abuse its discretion in dismissing Gray's Petition for Writ of Habeas Corpus. Accordingly, Respondents request that the Court affirms the dismissal of Gray's Petition for Writ of Habeas Corpus.

DATED this 24th day of May, 2012.



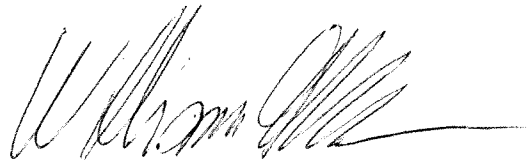
WILLIAM M. LOOMIS
Deputy Attorney General,
Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of May, 2012, I caused to be served a true and correct copy of the foregoing BRIEF OF RESPONDENTS to be served on:

WILLIAM GRAY #80064
IMSI
P.O. Box 51
Boise, Idaho 83707

Via Prison Mail System



WILLIAM LOOMIS