

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0112

TERENCE SIAS

VERSUS

**DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS (SECRETARY)**

Judgment Rendered: December 28, 2006

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 533,357, Division "O"

Honorable Wilson Fields, Judge Presiding

Terence Sias
DeQuincy, LA

Plaintiff/Appellant
In Proper Person

Debra A. Rutledge
Baton Rouge, LA

Counsel for Defendant/Appellee
Richard Stalder

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

Handwritten initials 'RS' and 'KRR' with a circled mark above them.

HUGHES, J.

Plaintiff, Terence Sias, appeals from a judgment of the district court dismissing his claims with prejudice. For the following reasons, we reverse and remand with instructions.

I. FACTS AND PROCEDURAL HISTORY

This case involves an incident that occurred on January 29, 2005 at the C. Paul Phelps Correctional Center in DeQuincy, Louisiana, a prison operated by the Department of Public Safety and Corrections for the State of Louisiana (DPSC). At approximately 7:30 a.m., Sergeant Karrie Baccigalopi entered an area of one of the prison's dorms to pick up some supplies. From where she stood, Sgt. Baccigalopi apparently saw into the dorm shower area and viewed inmate Terence Sias "in the shower with his exposed erected [sic] penis in his right hand moving in an up and down motion masterbating [sic], staring directly at me smiling." Sgt. Baccigalopi notified a lieutenant of the incident, after which Mr. Sias was handcuffed and taken into custody.

On February 2, 2005, the prison disciplinary board held a hearing on the incident. Mr. Sias moved to present witnesses "in his behalf" as permitted by the DPSC Disciplinary Rules and Procedures for Adult Inmates (DPSC Rules and Procedures).¹ After determining that Mr. Sias's witnesses' testimony would be limited to a rebuttal of Sgt. Baccigalopi's report, the board decided to "stipulate" the witnesses' expected testimony, as permitted by the DPSC Rules and Procedures.² The board found Mr. Sias guilty of aggravated sex offense, a violation of DPSC Rule #21, which reads

¹ An inmate has "the right to present evidence and witnesses in his behalf and to request cross-examination of the accuser, provided such requests are relevant, not repetitious, not unduly burdensome to the institution, or not unduly hazardous to staff or inmate safety." DPSC Rules and Procedures, p. 8.

² "The Board has the option of stipulating expected testimony from witnesses." DPSC Rules and Procedures, p. 8.

in pertinent part: “No inmate shall deliberately expose the genital organs and/or masturbate in view of an employee, visitor, guest, or their families.” [DPSC Rules and Procedures, p. 19] The board gave as reasons that “the report is clear and concise,” “the officer’s version is determined to be more credible than the inmate’s,” and that the inmate’s “only defense is denying contents of report.”³ The board sentenced Mr. Sias to 180 days’ forfeiture of good time credit, less time served in custody since the offense occurred. Sgt. Baccigalopi was not present at the hearing and did not testify.

Mr. Sias appealed to the prison warden and the DPSC. Both appeals failed. Pursuant to the Criminal Administrative Remedy Procedure Act (CARP) as specified in Louisiana Revised Statutes 15:1177(A), Mr. Sias appealed for review by the 19th Judicial District Court. In a judgment signed on August 25, 2005 the district court judge ruled:

After a careful de novo consideration of the entire record herein, together with, any traversal timely filed and the Court adopting as reasons, the Commissioner’s Report filed herein... **IT IS ORDERED, ADJUDGED AND DECREED**, that judgment is rendered affirming the Department’s decision, dismissing this suit, with prejudice, at Plaintiff’s cost.

Mr. Sias has now appealed to this court, presenting the following primary issue for review: whether an inmate has a constitutional right to present evidence and witnesses on his own behalf, to cross-examine witnesses on his behalf, and to cross-examine his accuser before a disciplinary board. Mr. Sias also questions whether the district court’s adoption of the Commissioner’s Report is contrary to the United States Constitution and the DPSC Rules and Procedures and whether Sgt. Baccigalopi’s conduct in reporting him violated DPSC Rule #10, which

³ These reasons are standard to the DPSC’s disciplinary report form and are provided on the form in item #23 with check-boxes to be completed by the hearing officer.

forbids “knowingly making false statements or deliberate omission of important facts on official reports or documents.”

II. LAW AND DISCUSSION

A. Constitutional Due Process Standards for Department of Corrections

Disciplinary Hearings

Mr. Sias argues that the constitutional protections of the Sixth Amendment and due process concerns under the Fourteenth Amendment extend the rights to present evidence and witnesses and to cross-examine witnesses, including an accuser, to inmate disciplinary hearings. As concerns Mr. Sias’s claims under the Sixth Amendment, prison disciplinary proceedings are essentially administrative in nature, not criminal or even civil, thus the Sixth Amendment does not apply. **Wolff v. McDonnell**, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935 (1974) (citing **Morrissey v. Brewer**, 408 U.S. 471, 488, 92 S. Ct. 2593, 22 L. Ed. 2d 484 (1972)).

Mr. Sias’s due process concerns are another matter, for while it is the case that while the condition of lawful imprisonment diminishes a prisoner’s rights, “he is not wholly without the protections of the Constitution and due process.” **Id.** at 555. Mr. Sias correctly notes in his brief that the loss of good time credits resulting from an administrative procedure can deprive an inmate of a liberty interest without sufficient procedural due process, as the United States Supreme Court has held. **Id.** at 556-57.

In **Wolff**, the Court held that an inmate has the right “to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals.” **Id.** at 566. Justice Byron White specified the limited nature of this particular right and also noted that a prison disciplinary authority need not state the

reasons for refusal to allow an inmate to call witnesses, although such an explanation would be “useful.” **Id.** In the case at bar, the disciplinary board’s refusal to allow Mr. Sias to introduce witnesses does not amount to a due process violation, as the board announced on the record that it was stipulating the witnesses’ expected testimony on Mr. Sias’s behalf in lieu of their appearance.

Finally, Mr. Sias argues that the board’s refusal to allow him to cross-examine and confront Sgt. Baccigalopi at the hearing amounted to a due process violation. The **Wolff** Court determined that confrontation and cross-examination, while crucial rights in the criminal defense context, present even greater hazards to institutional disciplinary interests, such as recrimination, than the right to call witnesses. **Id.** at 567. Thus, constitutional due process does not require a disciplinary board to allow these rights in hearing proceedings, as the board in the case at bar did not. We thus conclude that the DPSC Rules and Procedures, as used by the disciplinary board in Mr. Sias’s hearing on February 2, 2005, did not violate Mr. Sias’s constitutional due process rights. We note, however, and will discuss *infra*, that once this matter left the administrative sphere and moved to district court, additional due process concerns became implicated as provided in Louisiana Revised Statutes 15:1177, the section of CARP that provides for judicial review of inmate adjudications.

B. Evidence Standards in Disciplinary Context

Mr. Sias questions whether the board’s management of his disciplinary hearing violated the DPSC Rules and Procedures for such proceedings. In the administrative context, the rules of evidence are generally relaxed from those required in either criminal or civil proceedings. For instance, hearsay testimony, like a corrections officer’s written incident

report, will generally be admitted. *See Chaisson v. Cajun Bag & Supply Co.*, 97-1225, p. 11 (La. 3/4/98), 708 So.2d 375, 382. Also, Louisiana Revised Statutes 49:956(1) states that “[a]gencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs.”⁴

The DPSC Rules and Procedures require that an inmate be informed and acknowledge awareness of his or her enumerated rights, including:

[t]he right to present evidence and witnesses in his behalf, and to request cross-examination of the accuser...(The Board has the option of stipulating expected testimony from witnesses. In such a case, the Board should assign proper weight to such testimony as though the witness had actually appeared.) The accusing employee must be summoned when the report is based solely on information from Confidential Informants.⁵

Mr. Sias acknowledged at the outset of his hearing that he had been read his rights and that he understood them. He then moved to call witnesses to rebut Sgt. Baccigalopi’s written report. Using its prerogative, the board decided to stipulate Mr. Sias’s witnesses’ expected testimony as well as, it may be inferred, that of Sgt. Baccigalopi. The deliberations provided on the audio record, while scanty, suggest that the board did indeed give “proper weight” to both sides of the story before deciding, as allowed within its discretion, that the officer’s version was more credible than Mr. Sias’s.

It is noted in another portion of the above-quoted Rule that the only instance in which an accusing employee must be present and subject to participation in an inmate disciplinary hearing is when the report is based “solely on information from confidential informants,” which clearly was not

⁴A number of policy reasons have been advanced for treating evidentiary issues in administrative proceedings differently, the most pertinent in this inquiry being the specialized nature of the disciplinary board as factfinder and the participation of nonlawyers, such as inmates. *See* Frank L. Maraist, Louisiana Civil Law Treatise on Evidence and Proof, § 1.2.

⁵ DPSC Rules and Procedures, p. 8.

the case here. Mr. Sias argues that “the right to cross-examination [sic] the accuser is automatic when an inmate plead [sic] not guilty. This is a Jurisprudence rule in any court of the United States.” Unfortunately, Mr. Sias seems here to be confusing criminal procedure requirements with those in the administrative context. As noted above from the discussion of **Wolff**, the rights of confrontation and cross-examination afforded to a criminal defendant do not extend into the realm of inmate disciplinary proceedings.⁶

The DPSC Rules and Procedures also contain an “Evidence” provision, including the following: “The Disciplinary Board shall carefully evaluate all evidence presented or stipulated.” The audio recording of Mr. Sias’s hearing contains the board’s deliberations, which occurred while Mr. Sias was not present. Although brief, those deliberations indicate that the board did indeed heed this provision when it weighed Sgt. Baccigalopi’s written report against Mr. Sias’s testimony and that of his witnesses as stipulated. The board officer presiding at the hearing stated:

She doesn’t have a doubt...she observed this inmate in the shower with his erect penis in his right hand...moving up and down and staring directly at her [and] smiling...the report is precise and clear...and the officer’s version is more credible than the inmate’s...his only defense is to deny the contents of the report....

Audio Recording: Disciplinary Hearing of Terence Sias (Feb. 2, 2005).

We conclude thus that the disciplinary board adhered to the standards of evidence contained in the DPSC Rules and Procedures at Mr. Sias’s hearing; no violation occurred.

⁶ It should also be noted that the DPSC Rules and Procedures require inmates to make any appropriate motions at the outset of the hearing, or they will be considered waived (Rules and Procedures, p. 9). While Mr. Sias moved to call witnesses on his behalf at the proper time, he did not also request to cross-examine Sgt. Baccigalopi, as would have been his right. This omission sheds doubt on Mr. Sias’s ability to raise the issue on appeal, but we have addressed it here in order to respond completely to the issues presented by Mr. Sias.

C. Judicial Review by the Nineteenth Judicial District Court

Mr. Sias alleges that the district court erred in accepting the Commissioner's Report and adopting its reasons in the judgment signed on August 25, 2005. The record reflects that on June 20, 2005, Mr. Sias wrote to the court seeking to amend his petition with "newly discovered evidence" that Sgt. Baccigalopi had been fired for misconduct with an inmate. In his traversal filed on August 16, 2005 Mr. Sias again informed the court of Sgt. Baccigalopi's termination. He attached a report of an incident similar to his own where Sgt. Baccigalopi alleged a violation by another inmate, Ronald Martin. Finally, Mr. Sias named additional inmates, Hose Ovado and Kodd Huntley, who had also been subject to similar inquiries and, it appears, were subsequently cleared in proceedings that may have led to Sgt. Baccigalopi's termination. The essence of Mr. Sias's claims in the traversal and on appeal is that this additional information sheds doubt on Sgt. Baccigalopi's credibility in his own case. We agree.

The record does not reflect that the district court responded to Mr. Sias's attempts to supplement the record with evidence impugning Sgt. Baccigalopi's credibility and the August 25, 2005 judgment does not discuss the issue or provide an express reason for its decision not to entertain Mr. Sias's requests. Our review of the record suggests that this may amount to an abuse of discretion such that Mr. Sias has been denied sufficient due process.

Louisiana Revised Statutes 15:1177, which sets forth the judicial review provisions of CARP, provides that "[t]he court may affirm the decision of the agency or remand the case for further proceedings, or order that additional evidence be taken." LSA-R.S. 15:1177(8). The opportunity for the parties to present evidence occurs at the administrative level.

Lightfoot v. Stalder, 2000-1120, p. 6 (La. App. 1 Cir. 6/22/01), 808 So.2d 710, 715, *writ denied*, 2001-2295 (La. 8/30/02), 823 So.2d 957. If the court decides that additional evidence must be taken, such shall be accomplished “upon conditions determined by the court.” LSA-R.S. 15:1177(4).

This court has required the district court to return a case to DPSC for additional evidence on at least two occasions in recent jurisprudence. **Samuels v. Gryder**, 2005-1231, p. 4 (La. App. 1 Cir. 9/1/06), 2006 WL 2534431; **Peralla v. Hebert**, 96-0264 (La. App. 1 Cir. 11/8/96), 686 So.2d 172 (unpublished, cited in **Peralla v. Hebert**, 97-CA-2175, p. 2 (La. App. 1 Cir. 11/6/98), 722 So.2d 313, 314). In another case, the Louisiana Supreme Court has found abuse of discretion in a district court’s failure to order further evidence in a DPSC case. **State ex rel Robinson v. Cain**, 1999-2986 (La. 8/31/00), 766 So.2d 1268.

Our review of the record and Mr. Sias’s brief convinces us that additional evidence must be taken in order to ensure Mr. Sias’s rights to a fair disciplinary proceeding. The heart of Mr. Sias’s complaint is that Sgt. Baccigalopi’s version of the January 29, 2005 incident may be suspect in light of similar incidents she may have wrongly reported concerning other inmates and also in light of her alleged termination for misconduct with an inmate. We conclude that Mr. Sias has presented sufficient potential evidence to merit further investigation into Sgt. Baccigalopi’s credibility.⁷

Accordingly, in light of the possible due process violations at issue and as guided by the CARP statutory scheme, we find that further

⁷ We also note that according to Sgt. Baccigalopi’s report, when she entered the shower area and saw Mr. Sias, he was apparently already in the act of masturbating and his “erected” penis was already visible. Exposure of the genitals and masturbating are the two elements of DPSC Rule #21, as quoted above. But it is also the case that the Rule requires the inmate to be either masturbating or exposing himself “deliberately.” If Mr. Sias was in fact *already* engaged in his actions when Sgt. Baccigalopi entered the shower area and saw him, he may not have acted deliberately toward her and his intent may be an issue subject to reconsideration.

proceedings are required for a more thorough exercise of the administrative review procedure. We thus remand for the district court to order that additional evidence be taken by DPSC. If Mr. Sias is not satisfied by the response he receives, he may again seek judicial review.

CONCLUSION

The judgment of the district court affirming the DPSC's decision and dismissing petitioner's suit with prejudice is reversed. This matter is remanded to the district court with instructions to remand the case for further proceedings in order that additional evidence be taken in accordance with Louisiana Revised Statutes 15:1177(A)(8). Costs of this appeal in the amount of 475.08 will be assessed against Defendant, the State of Louisiana through the Department of Public Safety and Corrections.

REVERSED AND REMANDED WITH INSTRUCTIONS.