

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0159

JOSEPH V. FOSTER, JR.

VERSUS

LA. DEPT. OF PUBLIC SAFETY AND CORRECTIONS

DATE OF JUDGMENT: December 28, 2006

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
(NUMBER 523,459 DIV. "E-23"), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

THE HONORABLE WILLIAM A. MORVANT, JUDGE

Joseph V. Foster, Jr.
Angola, Louisiana

Plaintiff/Appellant
Pro Se

L. Bruce Dodd
Baton Rouge, Louisiana

Counsel for Defendant/Appellee
La. Dept. of Public Safety and
Corrections

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: AFFIRMED IN ACCORDANCE WITH UNIFORM COURT OF APPEAL RULE 2-16.2.A(1),(2),(4),(5), and (6).

Kuhn, J.

Plaintiff, Joseph V. Foster, Jr., an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“DPSC”), appeals a district court judgment dismissing his petition for judicial review of an administrative remedy action. We affirm.

Following an incident at the Louisiana State Penitentiary where Foster was imprisoned, he was charged with defiance, a violation of Rule No. 3 of the Disciplinary Rules and Procedures for Adult Inmates. The prison disciplinary board ultimately found Foster guilty of aggravated disobedience, a violation of Rule No. 5, and sentenced him to 8 days extra duty.¹ Foster appealed the disciplinary board’s decision, but the Warden denied his appeal. Thereafter, he filed a petition for judicial review with the Nineteenth Judicial District Court for the Parish of East Baton Rouge, urging that he did not receive sufficient notice of the amended charge and otherwise challenging the validity of the sentence.

In accordance with Louisiana Revised Statutes 15:1178 and 15:1188, the Commissioner screened Foster’s petition. The Commissioner recommended that Foster was not entitled to any relief, concluding that Foster failed to raise a substantial right violation that would invoke the jurisdiction of the district court pursuant to Louisiana Revised Statutes 15:1177(A)(9). The Commissioner found that the penalty at issue “did not constitute an atypical deprivation of a substantial right and is not subject to review by this Court. *Sandin v. Conner*, [515 U.S. 472,

¹ Apparently, the disciplinary board amended the charge against Foster after receiving a recommendation from the assistant warden, but the administrative record does not disclose when this occurred or when that information was communicated to Foster.

115 S.Ct. 2293, 132 L.Ed.2d 418 (1995)].” In a November 15, 2005 judgment, the district court judge adopted the Commissioner’s reasons and dismissed Foster’s petition for judicial review with prejudice at his cost. Foster has appealed, contending his due process rights have been violated.

After a thorough review of the record, we agree with the determinations of the Commissioner and 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. at 478, 115 S.Ct. at 2297 (quoting *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 v. Conner*, 515 U.S. at 485, 115 S.Ct. at 2301.

In the instant case, the imposition of a penalty of 8 days of extra duty was not atypical or a significant hardship in relation to the ordinary incidents of prison life. Thus, the imposition of this penalty did not violate Foster’s constitutional rights and did not afford him “a protected liberty interest that would entitle him to ... procedural protections.” *Sandin v. Conner*, 515 U.S. at 487, 115 S.Ct. at 2302; *see also Parker v. Leblanc*, 02-0399 (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, 738-39; *Davies v. Stalder*, 00-0101 (La. App. 1st Cir. 6/23/00), 762 So.2d 1239.

Accordingly, we affirm the district court's judgment in accordance with Uniform Court of Appeal Rule 2-16.2A(1),(2),(4),(5), and (6). The costs of this appeal are assessed to plaintiff-appellant, Joseph V. Foster, Jr.

AFFIRMED.