NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1866

LOUIS STEMLEY

VERSUS

KENNETH OVERMYER, JIM ROGERS, C. PAUL PHELPS, CORRECTIONAL CENTER, DEPARTMENT OF CORRECTIONS

Judgment Rendered: November 2, 2007

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Rouge, Louisiana
Trial Court Number 510,168

Honorable Janice Clark, Judge

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Louis Stemley
Kinder, LA

In Proper Person
Plaintiff – Appellant

Debra A. Rutledge
Baton Rouge, LA

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

* * * * * *

BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.

WELCH, J.

The plaintiff/appellant, Louis Stemley, an inmate in the custody of the Louisiana Department of Public Safety and Corrections ("the Department") and formerly confined to the C. Paul Phelps Correctional Center[1] in DeQuincey, Louisiana, appeals a judgment of the district court dismissing his petition for judicial review of Disciplinary Board Appeal Number PCC-2003-79 for failing to state a cause of action. We affirm the judgment in accordance with Uniform Court of Appeal Rules 2-16.2(A)(2), (4), and (5).

On February 11, 2003, the plaintiff was issued a disciplinary report for violating "Rule #22, (theft)" after he admitted taking sugar from the kitchen and after prison officials discovered a large quantity of sugar in his footlocker. After a hearing before the Disciplinary Board on February 14, 2003, the plaintiff was found guilty of violating the rule and was sentenced to "10 days Isolation (CTS), 8 days Extra Duty and Restitution of $.65 to cover the cost of the sugar." The plaintiff appealed the decision of the Disciplinary Board to the warden, contending that the finding of guilt was arbitrary and capricious due to insufficient evidence and that the sentence imposed was excessive. The warden denied his appeal, and therefore, the plaintiff commenced these proceedings for judicial review in the district court seeking to have his sentence vacated, to be given "days off" for the extra duty performed, and to have the disciplinary report removed from his records.

In response, the Department filed a peremptory exception raising the objection of no cause of action seeking the dismissal of the plaintiff's petition on the basis that his complaint involved neither an atypical substantial right deprivation or hardship nor a substantial loss indicating that the Department had deprived the plaintiff of any constitutional right or had acted negligently.

[1] Louis Stemley is currently confined to the Allen Correctional Center in Kinder, Louisiana.

On July 20, 2004, 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 penalties imposed in this matter did not constitute an atypical deprivation of a "substantial right" of the plaintiff, see **Sandin v. Conner**, 515 U.S. 472, 486-87, 115 S.Ct. 2293, 2301-02, 132 L.Ed.2d 418 (1995), the commissioner recommended that the plaintiff's suit be dismissed for its failure to state a cause of action (*i.e.*, its failure to raise a substantial right violation).

After considering the entire record of the proceedings, on August 31, 2004, the district court adopted the commissioner's recommendation and rendered judgment sustaining the defendant's exception raising the objection of no cause of action and dismissing the plaintiff's suit with prejudice. 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**, 515 U.S. at 478, 115 S.Ct. at 2297 (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.

In this case, the imposition of the penalties of ten days isolation, of eight days of extra duty, and of restitution in the amount $.65 to cover the cost of the sugar stolen by the plaintiff, were not atypical or a significant hardship in relation to the ordinary incidents of prison life. Thus, the imposition of these penalties 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.

Accordingly, we affirm the August 31, 2004 judgment of the district court 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, Louis Stemley.

AFFIRMED.