

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 CA 1334

DERRICK W. CURRY

VERSUS

BURL CAIN, WARDEN

Judgment rendered AUG 16 2006

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 519,651
Honorable Kay Bates, Judge

DERRICK W. CURRY
ANGOLA, LA

PLAINTIFF-APPELLANT (PRO SE)

L. BRUCE DODD
BATON ROUGE, LA

ATTORNEY FOR
DEFENDANT-APPELLEE
BURL CAIN, WARDEN

BEFORE: KUHN, GUIDRY, AND PETTIGREW, JJ.

Handwritten notes:
D.W.C.
L.B.D.
J.M.G.
by D.D.

PETTIGREW, J.

This action was filed by an inmate seeking judicial review of a disciplinary decision made by the Louisiana Department of Public Safety and Corrections ("DOC"). The district court, acting upon the recommendation of the commissioner, dismissed the inmate's suit without prejudice, citing a lack of subject matter jurisdiction. The district court concluded that the inmate had failed to exhaust his administrative remedies prior to filing his petition for judicial review. From this judgment, the inmate has appealed to this court.

FACTS

A review of the record in this matter reveals that on February 12, 2004, petitioner Derrick W. Curry, an inmate at the Louisiana State Penitentiary at Angola, Louisiana, was issued a disciplinary report for violation of Rule #30-W (General Prohibited Behavior). The disciplinary report indicated that earlier that date, Captain Willie R. Thomas received correspondence, referred to him by Investigative Services at the prison, that identified Curry as the writer of an anonymous letter that was sent to another inmate. The letter in question contained threats and "strong arm" language. Specific references made in the letter coincided with facts documented in Curry's Master Prison Record, and a comparison of handwriting samples revealed Curry to have been the author of the letter(s).¹

Curry appeared at a hearing before the Disciplinary Board on February 17, 2004, was found guilty of the charged offense and sentenced to a loss of 30 days good time and a change in housing quarters from Camp "D" Raven (maximum custody working cellblock) to Camp "J" Extended Lockdown (maximum custody). From this ruling, Curry filed a timely appeal of the decision by the Disciplinary Board wherein he argued that his rights had been violated when he failed to receive a copy of the disciplinary report at least 24 hours prior to the hearing; that the forfeiture of good time was not an applicable penalty; that the anonymous letter(s) should have been introduced and read into the record; that

¹ Although the record before this court indicates that two (2) letters were sent to two different inmates, the record contains a copy of only one letter.

an investigation should have been conducted; and lastly, that the imposed sentence was excessive and unduly harsh.

In a decision dated March 11, 2004, Warden Burl Cain stated that with respect to Curry's complaint regarding the forfeiture of 30 days good time, the forfeiture of Curry's good time had been administratively deleted by the Legal Programs Department for the reason that the forfeiture of good time is not an applicable sanction for a violation of Rule #30-W. Warden Cain also noted that according to the record, Curry was issued a copy of the disciplinary report, but refused to acknowledge its receipt. The warden further noted that evidence of this fact was sufficient to support the conclusion that Curry had received proper notice of the charges against him. The decision also stated that a copy of the report prepared by the Investigative staff included the anonymous letter(s) and was made a part of the record², thus no further investigation was warranted. The warden further stated that the remaining sanction of a quarters change from Camp "D" Raven (maximum custody working cellblock) to Camp "J" Extended Lockdown (maximum custody) was not excessive or unduly harsh. The decision by Warden Cain concluded that upon review of the issues raised by Curry in this matter, same were found to be without merit, and the appeal was denied.

On April 28, 2004, Curry filed a petition seeking judicial review in the 19th Judicial District Court of the denial of his disciplinary appeal. Warden Cain was named as the sole defendant in the suit filed by Curry. The basis of Curry's suit for review was that he was subjected to disciplinary action based upon insufficient evidence purporting to show that Curry had been the writer of an anonymous letter that was sent to another inmate, which contained threats and "strong arm" language. Curry filed for, and was permitted to proceed *in forma pauperis*.

Following a review of Curry's claim, the 19th Judicial District Court Commissioner noted that the only penalty actually imposed in this matter was a change of housing assignment and there was no indication from the record that Curry lost any good time as

² Please refer to Footnote 1.

a result of his disciplinary conviction. Further noting that La. R.S. 15:1177(A)(9) only authorizes an intervention by this court in cases where substantial rights have been violated, the commissioner cited **Sandin v. Conner**, 115 S.Ct. 2293 (1995), for the proposition that Curry possessed no constitutional or substantial right to any particular housing classification. Concluding that while this matter could be dismissed based upon Curry's failure to allege that a substantial right had been violated, the commissioner also concluded that because Curry failed to pursue an appeal to the Secretary of DOC, he had not exhausted the administrative remedies available to him, and therefore the district court lacked subject matter jurisdiction over the case at bar. The commissioner recommended that the matter be dismissed without prejudice based on a lack of subject matter jurisdiction, raised by the court on its own motion.

Upon review of the record and consideration of an Objection to the Commissioner's Recommendation that was filed by Curry, the 19th Judicial District Court agreed with the recommendation of the commissioner, and in a judgment dated April 15, 2005, the district court dismissed Curry's suit without prejudice based on a lack of subject matter jurisdiction raised by the court pursuant to its own motion.

On May 4, 2005, Curry moved for a devolutive appeal to this court.

Upon review of the record in this matter, we note that following the decision by the Disciplinary Board, Curry appealed to Warden Cain who issued a decision denying Curry's appeal. The second page of the decision by the warden contained the following notice:

INSTRUCTIONS TO INMATE: This decision constitutes the final administrative decision of the agency. The Secretary will only consider appeals from decisions which resulted in the imposed or suspended sentences of one or more of the following penalties: (1) Isolation; (2) Failure to earn good time; (3) custody change from minimum to medium if it involves a transfer to another institution; (4) Custody change from minimum or medium to maximum custody; and (5) restitution. *Since none of these penalties were imposed, you may not appeal this decision to the Secretary.* If you are dissatisfied with this decision, you may request judicial review in the Nineteenth Judicial District Court within 30 days of receipt of this decision. [Italic emphasis supplied]

Based upon the instructions contained in the foregoing notice, it appears that Curry had in fact exhausted all of the administrative remedies available to him, thus the district court erred in concluding that it lacked subject matter jurisdiction.

We nevertheless believe it is sufficiently established by the record before us that Curry was the writer of an anonymous letter that had been sent to another inmate, which contained threats and "strong arm" language. As the commissioner noted, the only penalty actually imposed in this matter was a change of housing assignment and there was no indication from the record that Curry lost any good time as a result of his disciplinary conviction. It was further noted that pursuant to La. R.S. 15:1177(A)(9), this court is only able to reverse or modify an agency decision in cases where constitutional rights have been violated. Additionally, "the 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. 472, 478, 115 S.Ct. 2293, 2297, 132 L.Ed.2d 418 (1995).

Curry's change in custody status from Camp "D" Raven (maximum custody working cellblock) to Camp "J" Extended Lockdown (maximum custody) was not excessive or unduly harsh in relation to the ordinary incidents of prison life. Thus, the change in custody did not afford Curry "a protected liberty interest that would entitle him to . . . procedural protections," or violate his constitutional rights. **Sandin**, 515 U.S. at 487, 115 S.Ct. at 2302.

Therefore, we amend the judgment of the 19th Judicial District Court that dismissed Curry's suit without prejudice based on a lack of subject matter jurisdiction, and reinstate Warden Cain's decision that denied the appeal and affirmed the sentence of the Disciplinary Board. Accordingly, we hereby dismiss this matter with prejudice and assess inmate Curry with all costs associated with the instant appeal.

AMENDED, AND AS AMENDED, AFFIRMED.