

Jm

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gary Jones,

Appellant

v.

No. 1619 C.D. 2005

Submitted: October 7, 2005

Lt. Sutliff, Security Officer;
Lt. Cywinski, Security Officer; Nancy
Barry, Mail Room Supervisor; Vincent
McClosky, Property Room Supervisor;
Sgt. Koynik, Restricted Housing; Officer:
Wilks, Restricted Housing Officer;
John Doe(s); Thomas Lavan, Acting
Supervisor; Thomas James, Chief
Secretary; James L. Grace, Deputy
Superintendent; Kenneth D. Kyler,
Superintendent; and Sharon M. Burks,
Grievance Officer

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY

FILED: December 1, 2005

Gary Jones (Jones), *pro se*, appeals from a decision of the Court of Common Pleas of Huntington County (trial court) which sustained the preliminary objection in the nature of a demurrer of Lt. Sutliff, et al. (Appellees) and dismissed the Complaint filed by Jones. We affirm.

On May 26, 2004, Jones filed a Complaint seeking damages under 42 U.S.C. § 1983 wherein he generally alleges that Appellees violated his due process rights by confiscating his property and transferring him to another prison to

retaliate against him for exercising his protected rights of freedom of speech and the press and for petitioning the Department of Corrections for redress of grievances.¹ Specifically, in the "Facts" section of his Complaint, Jones alleges, in relevant part, that:

14. In June of 2002, plaintiff was removed from the general population at SCI-Dallas and placed in administrative segregation in the Restricted Housing Unit (R.H.U.), under investigation accused of running an inmate organization without prior approval of the prison superintendent in relation to plaintiff's involvement in a newsletter, entitled "Grapevine", which advocates life sentenced prisoners issues. The investigation was prompted by Defendant Lt. Sutliff because of plaintiff's exercise of his First Amendment rights involving the newsletter, a publication prepared by plaintiff and distributed by plaintiff's family members. Plaintiff was released (without any disciplinary action) from the R.H.U. after serving eleven (11) days.

15. On or about October 31, 2002, Defendant Nancy Barry, the SCI-Dallas mail inspector supervisor, confiscated plaintiff's incoming publication, Grapevine, as contraband.

¹ Section 1983 provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ...

42 U.S.C. § 1983.

16. Plaintiff therefore sought relief from the aforesaid confiscation of his newsletter via the prison process and on or about January 15, 2003, the DOC Central Office at its headquarters at Camp Hill, PA, ordered SCI-Dallas Superintendent Mr. Thomas Lavan to return the plaintiff's confiscated "Grapevine" newsletter, thereby exonerating plaintiff from the accusation of receiving contraband via the mail as alleged by Defendant Nancy Barry.

Jones further alleges in his Complaint that:

37. On or about April 15, 2003, plaintiff was transferred from SCI-Dallas to SCI-Huntington ... This transfer by defendants knowingly impeded plaintiff's exercise of his freedom of speech and/or press rights and knowingly worsened his mental anguish and psychological well being, and both his living and working conditions within the D.O.C., to wit:

a) Shortly after plaintiff's arrival at SCI-Huntington on April 15, 2003, [a defendant] knowingly and discriminatorily confiscated plaintiff's approved radio and Swintec 1000 Word Processor, thereby preventing plaintiff from exercising his First Amendment right to advocate and adequately express in typed written form "lifer issues" via newsletter publication form ...

Appellees filed preliminary objections, including preliminary objections in the nature of a demurrer. By order dated January 20, 2005, the trial court sustained Appellees' demurrer and dismissed Jones' Complaint. In its opinion, the trial court explained that the DOC grievance system provides adequate post-deprivation remedies to inmates in satisfaction of the Due Process Clause. Thus, the trial court concluded that Jones "availed himself of the grievance process, and received a decision, albeit an unsuccessful one, at all levels. In short,

Mr. Jones received all the due process to which he is entitled.” (Trial Court opinion, p. 14). Jones’ appeal followed.²

On appeal, Jones argues that the trial court erred by dismissing his Complaint because several of his constitutional rights were violated when prison officials retaliated against him for exercising his First Amendment rights of freedom of speech and freedom of the press.

First, we address Jones’ allegation that his constitutional rights were violated when Appellees confiscated his property. Under the Due Process clause, even an intentional deprivation of an inmate’s personal property by state officials does not violate his due process rights, if an adequate post-deprivation remedy exists. Hudson v. Palmer, 468 U.S. 517 (1984). In Austin v. Lehman, 893 F.Supp. 448 (E.D. Pa. 1995), the court stated that an inmate grievance system can constitute an adequate post-deprivation remedy.

In this case, Jones complained that his word processor, which he had been allowed to purchase, was confiscated when he was transferred to another correctional facility. According to his Complaint, Jones did in fact file a grievance concerning this property. However, his grievance was denied because it was the opinion of the authorities at the correctional facility Jones was transferred to that the word processor he had purchased earlier was not permitted because it has memory capability if it is used with a memory card. Even though Jones did not

² Our scope of review of a trial court order sustaining preliminary objections on the basis that the law will not permit recovery (demurrer) is whether on the facts alleged the law states with certainty that no recovery is possible. Hawks by Hawks v. Livermore, 629 A.2d 270 (Pa. Cmwlth. 1993). We must accept as true all well pled allegations and material facts averred in the complaint as well as inferences reasonably deductible therefrom and any doubt should be resolved in favor of overruling the demurrer. Id.

have a memory card, the prison authorities concluded that, pursuant to a DOC administrative regulation, the word processor was still not an approved item. A radio was also confiscated from Jones because it had an external jack that could be used for external speakers. He also filed a grievance with regard to this item, which was denied. Although Jones did not prevail with regard to these grievances, such does not affect their adequacy as a post-deprivation remedy. Austin. Thus, the internal grievance procedure constituted an adequate post-deprivation remedy for any deprivation Jones may have suffered.

Jones also alleges a violation of his rights because he was transferred to the RHU because of the "Grapevine" newsletter. However, the internal grievance procedure was available to Jones with regard to this issue and, as stated in his Complaint, he was in fact successful when he availed himself of this procedure with regard to this issue. Therefore, it is clear that Jones was provided with an adequate remedy with regard to his placement in the RHU.

With regard to the transfer of prisoners and the Due Process Clause, the Courts of this Commonwealth and the Federal Courts have consistently held that prison officials have the authority to determine where a prisoner should be housed and that the Due Process Clause imposes few restrictions on the use of that authority. See Wilder v. Department of Corrections, 673 A.2d 30 (Pa. Cmwlth. 1996) and Grayson v. Rison, 945 F.2d 1064 (9th Circ. 1991). Furthermore, the United States Supreme Court has stated that:

Neither, in our view, does the Due Process Clause in and of itself protect a duly convicted prisoner against transfer from one institution to another within the state prison system. Confinement in any of the State's institutions is within the normal limits or range of custody which the conviction has authorized the State to impose. That life in one prison is much more disagreeable than in another does not in itself signify that a Fourteenth Amendment

liberty interest is implicated when a prisoner is transferred to the institution with the more severe rules.

Meachum v. Fano, 427 U.S. 215, 225, 96 S.Ct. 2532, 2538 (1976).

In this case, Jones alleges a due process violation based on this transfer from one prison to another. However, it is well-settled that there is no due process violation by such a transfer. Meachum.

Thus, even accepting all the allegations set forth in Jones' Complaint as true, it is evident that he has suffered no deprivation of his due process rights and has also failed to set forth any injury that would be compensable under 42 U.S.C. § 1983. Therefore, the trial court did not err by sustaining the preliminary objections of Appellees on the basis that the law will not permit recovery.

Accordingly, the order of the trial court sustaining Appellees' preliminary objections in the nature of a demurrer and dismissing Jones' complaint is affirmed.


JIM FLAHERTY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gary Jones,

Appellant

v.

No. 1619 C.D. 2005

Lt. Sutliff, Security Officer;
Lt. Cywinski, Security Officer; Nancy
Barry, Mail Room Supervisor; Vincent
McClosky, Property Room Supervisor;
Sgt. Koynik, Restricted Housing; Officer;
Wilks, Restricted Housing Officer;
John Doe(s); Thomas Lavan, Acting
Supervisor; Thomas James, Chief
Secretary; James L. Grace, Deputy
Superintendent; Kenneth D. Kyler,
Superintendent; and Sharon M. Burks,
Grievance Officer

ORDER

AND NOW, December 1, 2005, the order of the Court of
Common Pleas of Huntington County sustaining Appellees' preliminary objections
in the nature of a demurrer and dismissing Jones' complaint is hereby AFFIRMED.


JIM FLAHERTY, Senior Judge

Certified from the Record
DEC 01 2005
and Order Exit

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GARY JONES,

No. 33 MAL 2006

Petitioner

v.

Petition for Allowance of Appeal from the
Order of the Commonwealth Court

LT. SUTLIFF, SECURITY OFFICER; LT. :
CYWINSKI, SECURITY OFFICER; :
NANCY BARRY, MAIL ROOM :
SUPERVISOR; VINCENT MCCLOSKEY, :
PROPERTY ROOM SUPERVISOR; SGT. :
KOYNIK, RESTRICTED HOUSING; :
OFFICER WILKS, RESTRICTED :
HOUSING OFFICER; JOHN DOE(S); :
THOMAS LAVAN, ACTING :
SUPERVISOR; THOMAS JAMES, CHIEF :
SECRETARY; JAMES L. GRACE, :
DEPUTY SUPERINTENDENT; KENNETH :
D. KYLER, SUPERINTENDENT; AND :
SHARON M. BURKS, GRIEVANCE :
OFFICER, :

Respondents

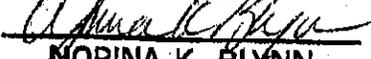
ORDER

PER CURIAM

AND NOW, this 12TH day of July, 2006, the Petition for Allowance of Appeal is
hereby DENIED.

TRUE & CORRECT COPY

ATTEST: JUL 12 2006


NORINA K. BLYNN
CHIEF CLERK