

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paul J. Rogers, :
Petitioner :
v. :
Jeffrey Beard and Donald Vaughn, :
Respondents :

No. 206 M.D. 2006

Certified from the Record

MAY 17 2006

PER CURIAM

ORDER

and Order Exit

Now, May 16, 2006, upon consideration of respondents' preliminary objection in the nature of a demurrer and petitioner's response, the demurrer is sustained, and the petition for review is dismissed.

The Constitution requires compliance with minimal federal due process standards as outlined in Wolff v. McDonnell, 418 U.S. 539 (1997), and Sandin v. Conner, 515 U.S. 472 (1995), when a protected liberty interest is at stake. Lockett v. Blaine, 850 A.2d 811 (Pa. Cmwlth. 2004). The inquiry under Sandin is whether the restrictive conditions impose an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. Wilkinson v. Austin, 125 S. Ct. 2384 (2005). Confinement in restricted custody does not impose an atypical and significant hardship in relation to ordinary prison life that would give rise to a protected liberty interest. Griffin v. Vaughn, 112 F.3d 703 (3d Cir. 1997); Singleton v. Lavan, 834 A.2d 672 (Pa. Cmwlth. 2003); Brown v. Blaine, 833 A.2d 1166 (Pa. Cmwlth. 2003). Because petitioner's placement on the Department of Corrections' restricted release list does not affect the restrictive nature of his confinement, petitioner has failed to state a claim for violation of his due process rights.

Moreover, evaluating an inmate for custody level change is a matter of administrative discretion; no two inmates can be considered similarly situated for the purpose of judicial review on equal protection grounds when the challenged decision may be legitimately be informed by a broad variety of individual characteristics. Reider v. Bureau of Correction, 502 A.2d 272 (Pa. Cmwlth. 1985).

