

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 2104

ROGERS V. ATKINS

VERSUS

**JAMES LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF
PUBLIC SAFETY & CORRECTIONS, ROBERT BUTLER, CHAD
MANZENA AND WILLIE WASHINGTON, OFFICERS AT
LOUISIANA STATE PENITENTIARY**

Judgment Rendered: May 6, 2011

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 583,607**

Honorable Wilson Fields, Judge Presiding

**Rogers Atkins
Angola, LA**

Plaintiff/Appellant, pro se

**William Kline
Baton Rouge, LA**

**Counsel for Defendant/Appellee,
Louisiana Department of
Public Safety & Corrections**

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

WHIPPLE, J.

In this prisoner suit, Rogers Atkins, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the DPSC) and confined to the Louisiana State Penitentiary in Angola, Louisiana, filed a petition for judicial review, challenging the judgment of the district court dismissing his petition for judicial review of Disciplinary Board Appeal Number LSP-2009-0300-LSP. For the following reasons, we affirm the district court's judgment.

PROCEDURAL HISTORY

On April 13, 2009, Atkins was issued a disciplinary report, charging him with a violation of Rule 30E (general prohibited behavior). After a hearing before the Disciplinary Board, Atkins was found guilty of violating the rule and sentenced to a custody change to maximum—working cell block. Atkins appealed the decision of the Disciplinary Board to the warden, but the warden denied his appeal on the grounds that Atkins had been provided a hearing comporting with due process and that the decision of the Disciplinary Board was appropriate. Atkins's subsequent appeal to the Secretary of the DPSC was also denied.

Atkins then commenced these proceedings for judicial review in the district court, seeking reversal of the disciplinary finding, expungement of the disciplinary report from his prison record, a reinstatement of all privileges, and back pay of his incentive wages. Pursuant to the screening requirements set forth in LSA-R.S. 15:1178, the matter was submitted to the commissioner for judicial screening prior to service on the named defendants.

On December 2, 2009, the commissioner issued the screening recommendation, noting that LSA-R.S. 15:1177(A)(9) authorizes the district

court to intervene in the DPSC's decision only if the plaintiff's "substantial rights" have been violated. The commissioner further determined that Atkins's due process rights were "more than satisfied" and that the penalty imposed herein did not involve an atypical deprivation of a "substantial right" of Atkins. Therefore, the commissioner recommended that Atkins's action be dismissed for failure to raise a substantial right violation (i.e., for failure to state a cause of action).

After considering the entire record in this matter, the district court adopted the commissioner's screening recommendation and rendered judgment dated January 4, 2010, dismissing Atkins's petition for failure to raise a substantial right violation and, thus, to state a cause of action. From this judgment, Harris appeals, contending that his due process rights were violated at the disciplinary hearing.

DISCUSSION

After a thorough review of the entire record of these proceedings, we find no error in the commissioner's screening recommendation or in the district court's judgment. "[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. 472, 478, 115 S. Ct. 2293, 2297, 132 L. Ed. 2d 418 (1995). 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, 115 S. Ct. at 2301. Discipline by prison officials in response to a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law. Sandin, 115 S. Ct. at 2301.

In the instant case, the custody change to working cellblock 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 Atkins's constitutional rights and did not afford him "a protected liberty interest that would entitle him to ... procedural protections." Sandin, 115 S. Ct. at 2302; Parker v. LeBlanc, 2002-0399 (La. App. 1st Cir. 2/14/03), 845 So. 2d 445, 446; Giles v. Cain, 99-1201 (La. App. 1st Cir. 6/23/00), 762 So. 2d 734, 738-739; Davies v. Stalder, 2000-0101 (La. App. 1st Cir. 6/23/00), 762 So. 2d 1239, 1241.

CONCLUSION

For the above and foregoing reasons, the January 4, 2010 judgment of the district court dismissing with prejudice Atkins's petition for judicial review is affirmed. Costs of this appeal are assessed against plaintiff, Rogers Atkins.

AFFIRMED.