

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-164

NOVEMBER TERM, 2007

Eugene F. Ladd	}	APPEALED FROM:
	}	
v.	}	Washington Superior Court
	}	
Richard Plank, Randy Porter, Michael McGurl and Susan Blair	}	DOCKET NO. 606-10-06 Wncv
		Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

Plaintiff Eugene Ladd appeals pro se from the trial court's dismissal of his complaint. We affirm.

Plaintiff is an inmate committed to the custody and care of the Vermont Department of Corrections. He is serving a sentence of fifty days to thirty years and six months for crimes including escape, retail theft, and grossly negligent operation. In April 2005, plaintiff was convicted of a disciplinary violation for "threatening another with harm, bodily injury, or an act with adverse consequences." He was given three days in segregation as a result. The Department later expunged the disciplinary record.

In October 2006, plaintiff filed a complaint against four Department employees. He indicated that he was filing a civil rights action for damages under 12 V.S.A. § 5601 and 42 U.S.C. § 1983, "alleging the False Imprisonment and unlawful restraint in segregation in violation of the Due Process Clause" in the state and federal constitutions. The State moved to dismiss plaintiff's complaint under Vermont Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted. Plaintiff then filed an amended complaint, indicating that he was seeking damages based upon intentional infliction of emotional distress and the intentional infliction of mental anguish; he reiterated his assertion that his placement in solitary confinement for three days violated his right to due process under the state and federal constitutions.

In a March 2007 order, the trial court granted defendants' motion to dismiss. It found that plaintiff's allegations did not support a right to federal procedural due process protections that would give rise to a civil action. Similarly, it found that the complaint included no allegations to suggest the availability of a state right to due process protections in the absence of a federal right. Finally, the court stated that all of plaintiff's various tort claims apparently arose out of plaintiff's three days of segregation and the alleged mishandling of the disciplinary hearing. It found that plaintiff's allegations did not describe tortious conduct. As it explained, the facts of a disciplinary hearing and three days of unremarkable segregation for an inmate whose liberty was already restricted by imprisonment did not

inherently give rise to any tort claims arguably within the scope of the allegations in the complaint. Plaintiff appealed.

Plaintiff argues that the court erred in dismissing his complaint. He maintains that his due process rights were violated because he received insufficient notice of his alleged disciplinary infraction and he was denied the opportunity to marshal facts in his defense. He also asserts that there was inadequate evidence to support his guilt and to warrant segregation. According to plaintiff, he presented sufficient evidence to support the claims raised in his complaint and to warrant the relief that he requested.

A complaint is properly dismissed under V.R.C.P. 12(b)(6) when it is clear beyond a doubt that there exist no facts or circumstances that would entitle the plaintiff to relief. Richards v. Town of Norwich, 169 Vt. 44, 48 (1999). On review, this Court assumes that all reasonable inferences that can be drawn from the complaint are true and that all contravening assertions are false. Id. at 48-49. We agree with defendants that because plaintiff's disciplinary conviction was expunged from his record, his complaint essentially seeks damages solely for his three days of confinement in the prison's segregation unit. We conclude that the trial court properly dismissed plaintiff's complaint here.

To sustain his claim under 42 V.S.A. § 1983, plaintiff's claim must be predicated on a violation of federal law. Herrera v. Union No. 39 Sch. Dist., 2006 VT 83, ¶ 24. Because plaintiff alleged a violation of procedural due process, he needed to demonstrate that he had a protected liberty interest with which the State interfered. Id. No such liberty interest was implicated here. The United States Supreme Court held in Sandin v. Conner that assigning an inmate to thirty days of segregation did not "present a dramatic departure" from the basic conditions of the inmate's sentence, and it "did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest." 515 U.S. at 485-86. Plaintiff here failed to allege any facts to show that being placed in segregation for three days was more harsh or extraordinary than the segregation found not actionable under § 1983 in Sandin. He similarly failed to allege facts to show why a different result should obtain under the state due process clause. See Parker v. Gorczyk, 170 Vt. 263, 273 (2000) (explaining that in evaluating due process claim brought under Vermont Constitution, court should examine "particular circumstances involved, including consideration of the nature and significance of the interest at stake, the potential impact of any decision resulting in deprivation of that interest, and the role that procedural protections might play in such a decision). His claims were thus properly dismissed. Finally, we note that plaintiff does not challenge the court's dismissal of his common law tort claims and thus, he has waived any arguments on this issue. See Lamell Lumber Corp. v. Newstress Intern., Inc., 2007 VT 83, ¶ 11 (arguments not raised on appeal are waived).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice