

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37063

GRETCHEN A. CACCIAGUIDI,)	2011 Unpublished Opinion No. 426
)	
Petitioner-Appellant,)	Filed: April 5, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO, DEPARTMENT OF)	THIS IS AN UNPUBLISHED
CORRECTION,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Respondent.)	
_____)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Stephen S. Dunn, District Judge; Hon. Rick Carnaroli, Magistrate.

Decision of the district court, on intermediate appeal from the magistrate, affirming dismissal of petition for writ of habeas corpus, affirmed.

Gretchen A. Cacciaguidi, Pocatello, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark A. Kubinski, Deputy Attorney General, Boise, for respondent.

GUTIERREZ, Judge

Gretchen A. Cacciaguidi appeals from the district court’s intermediate appellate decision affirming the magistrate court’s dismissal of her petition for writ of habeas corpus. We affirm.

I.

FACTS AND PROCEDURE

Cacciaguidi was convicted of felony DUI, Idaho Code § 18-8004, and sentenced on September 7, 2006, to imprisonment of one year determinate and four years indeterminate. In August 2007, the Idaho Commission of Pardons and Parole granted Cacciaguidi a tentative parole date, conditioned upon her successful completion of the STAR (“Striving Toward Active Recovery”) Therapeutic Community (“TC”) program, a substance abuse treatment program. She applied for admission and was accepted into the TC in September 2007.

Cacciaguidi received a STAR TC handbook and participation agreement upon entry into the program. The district court set out the basic structures of the TC as follows:

The Handbook defines the program and sets out the philosophy, structure and processes of the TC. The TC “family” consists of staff serving as leaders and role models, and “family members.” “As a member of the STAR TC Program, each member is responsible not only for his actions but also for the actions of the family as a whole.” The TC achieves community management through a combination of structure, confrontation, and accountability, and each member is expected to be aware of and confront any violations of the rules or behavior that is contrary to the values, principles, or philosophy of the TC.

The primary method of confrontation and accountability is the pull-up system where a family member confronts another member on behavior or attitude that does not comply with the rules or family values. All pull-ups are considered valid and the proper response is to say “thank you, I’ll get on top of that,” followed by properly addressing the behavior or attitude. Pull-ups that stem from improper motivation, retaliation, or anything other than responsible concern may be brought to the attention of staff through a written pull-up. Sanctions for rule violations include Corrective Learning Experiences, Encounter Groups, Therapeutic Peer Reprimand/Haircuts, staff facilitated mediation, or discharge from the program.

While in the program, Cacciaguidi experienced conflict with other inmates, including receiving pull-ups from those inmates. Following a mediation on the issue on October 2, 2007, she received a disciplinary offense report for aggressive behavior and as a result, she was removed from TC. On May 20, 2008, she filed a petition for writ of habeas corpus in Madison County, which was dismissed by the district court seven days later on the ground that it failed to allege any constitutional violations pursuant to I.C. § 19-4205(2). She filed a second habeas corpus petition in Bannock County in February 2009, asserting nearly the same issues. Specifically, she contended that a number of acts by TC staff violated her First and Fifth Amendment rights, and that her right to due process was violated by disciplinary actions taken within the TC as well as actions by the Parole Commission. Cacciaguidi asserted that she was unfairly treated by certain staff members, other inmates, and certain family members and contends that both the pull-up system and the overall structure of the TC violated her right to due process because she could not defend her acts, but was required to accept all pull-ups and criticism as valid. Cacciaguidi also contended that the disciplinary offense report she received upon exiting the TC violated her due process rights and kept her from her valid tentative parole date of September 4, 2007.

Furthermore, Cacciaguidi asserted that the Parole Commission unfairly refused to grant her parole at the end of her fixed time of one year. She asserted that she had presented the Parole Commission with an alternate case plan for treatment and had been unfairly denied parole and punished for not reapplying to the TC.¹ She requested the court grant: (1) unspecified injunctive relief regarding the alleged unfair failure to grant her parole; (2) expungement of her disciplinary record from the TC; (3) judgment of equity; and (4) the implementation of due process guarantees.

The magistrate dismissed the petition on the ground that it did not allege a state or federal constitutional claim. Cacciaguidi appealed to the district court, and following briefing by the parties, the court affirmed the magistrate's dismissal of her habeas petition. She now appeals the decision of the district court.

II. ANALYSIS

Cacciaguidi contends that the district court erred in affirming the magistrate's dismissal of her petition for a writ of habeas corpus. Specifically, she contends that her participation in and removal from the TC program violated a variety of her constitutional rights and thus, the magistrate erred in dismissing her petition.

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *Losser v. Bradstreet*, 145 Idaho 670, 672, 183 P.3d 758, 760 (2008); *State v. DeWitt*, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). Whether to issue a writ of habeas corpus is a matter within the discretion of the trial court. *Johnson v. State*, 85 Idaho 123, 127, 376 P.2d 704, 706 (1962); *Dopp*, 139 Idaho at 659, 84 P.3d at 595. When reviewing an exercise of discretion in a habeas corpus proceeding, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason. *Duvalt v. Sonnen*, 137 Idaho

¹ The district court did not address the issue of the Parole Commission's denial of parole in its substantive discussion of the case, and Cacciaguidi does not appear to advance her denial of parole argument on appeal to this Court.

548, 552, 50 P.3d 1043, 1047 (Ct. App. 2002). If a petitioner is not entitled to relief on an application for a writ of habeas corpus, the decision by the petitioned court to dismiss the application without an evidentiary hearing will be upheld. *Dopp*, 139 Idaho at 660, 84 P.3d at 596.

Idaho Code § 19-4205(2) states, in relevant part, that a habeas petition “shall specify that the prisoner is alleging state or federal constitutional violations concerning: (a) The conditions of his confinement; (b) The revocation of his parole; (c) Miscalculation of his sentence; (d) Loss of good time credits; or (e) A detainer lodged against him.” Additionally, I.C. § 19-4209(1) provides:

The court may dismiss with prejudice a petition for writ of habeas corpus under this section, in whole or in part, prior to service of the petition on the respondent, if the court finds:

....

(c) The petition fails to state a claim of constitutional violation upon which relief can be granted.

The magistrate dismissed Cacciaguidi’s petition, concluding that “it does not allege any state or federal constitutional violations required under I.C. § 19-4205(2)” and elaborated as follows:

In sum and substance, this petition alleges that the Petitioner was unfairly disciplined while a member of the Therapeutic Community because the other women inmates and the prison staff lied about her words and actions. The attachments to her petition concerning exhaustion of administrative remedies reveal the other side of the story which indicate that from the perspective of prison staff and administration . . . her words, attitude and actions led to her dismissal from the Therapeutic Community. The Petitioner alleges that she is the victim of a conspiracy between the administration of the IDOC, the parole board, the staff in charge of the Therapeutic Community and her fellow inmates which deprived her of release from prison at the end of one year of fixed time. But, for this conspiracy, she alleges that she would have been released and not served any of the four year indeterminate sentence she is currently serving. Among her prayers for relief is that this Court should set the record straight that she was wrongfully disciplined by IDOC, the victim of this conspiracy [sic], that she did no wrong, and that she should be released to outpatient treatment.

In fact, her petition, stated in lesser detail, but complaining of the same alleged constitutional violations through [the] same alleged events that occurred while in the Therapeutic Community at SBWCC in September and October 2007, was presented and denied by the [district court judge in Madison County]

The district court affirmed the dismissal on appeal, reaching the same conclusion as the magistrate that Cacciaguidi failed to state a constitutional claim upon which relief could be granted, but went into further detail regarding each of Cacciaguidi's claims on appeal. Specifically, the court found that Cacciaguidi had not demonstrated that her First Amendment rights had been violated by TC procedures, that disciplinary action against her and her ultimate dismissal from the TC program was supported by "some evidence," that her procedural due process rights were not violated by TC procedures, that her constitutional rights were not violated by alleged unfair treatment and dishonesty by TC staff members and participants, and that various other constitutional rights, including the right against self-incrimination, double jeopardy, bills of attainder, and ex post facto laws, and rights to equal protection and confrontation of witnesses, were not implicated by the facts alleged.

In her appellant's brief to this Court, Cacciaguidi appears to take a somewhat different tack than she pursued below, listing the following three issues on appeal:

Did the lower courts abuse their discretion to conceal state misconduct, *crimen falsi*, to misappropriate federal funds, and rule in contempt of the U.S. Constitution for the therapeutic community operations subterfuge?

Is this case a matter of public interest and policy, a matter of violations of public constitutional law, a hidden work of fraud and conspiracy, a public crime?

Does dismissal immunize state action from liability?

However, in her reply brief, Cacciaguidi then lists approximately twelve additional issues that she maintains are preserved for appeal--some of which overlap with the issues addressed by the district court on appeal. It is well established that where an intermediate appeal has occurred, we will only consider issues that were raised in that intermediate appeal. *Matthews v. Jones*, 147 Idaho 224, 228, 207 P.3d 200, 204 (2009). Thus, we will only address the issues which an examination of the record indicates were raised and addressed below.² In addition, Cacciaguidi

² For example, in her briefs to this Court, Cacciaguidi spends considerable effort arguing that the TC is a "conspiracy to seize and violate federally protected rights" that is perpetuated by "legislative, judicial, and executive acts" in violation of 42 United States Code § 1985, that she raises a "public interest matter" pursuant to 42 U.S.C. § 1983, *et seq.*, and that the TC violates numerous sections of U.S.C. Title 18. These issues, however, were not raised before the district court and we will not address them for the first time on appeal. We do note that habeas corpus only provides relief for *constitutional* violations, not merely statutory violations.

also seems to advance a general attack on the constitutionality of TC rules on behalf of all prisoner participants and the “misappropriation” of funds by the TC on behalf of “the American public.” We note that to the extent that Cacciaguidi is attempting to challenge the TC procedures as they apply to others, she does not have standing to do so. Idaho’s habeas statute specifically grants a prisoner the right to file a petition to request that a court inquire into state or federal constitutional questions concerning “conditions of *his* confinement,” “revocation of his parole,” “[m]iscalculation of his sentence,” “[l]oss of good time credits,” or “[a] detainer lodged against *him*.” I.C. § 19-4205 (emphasis added). Thus, there is no provision for a prisoner to advance the rights of others.

Pursuant to these parameters, we examine whether the district court erred in concluding that Cacciaguidi did not raise a constitutional claim upon which relief could be granted--by examining in turn each constitutional issue identified and addressed by the district court.

A. First Amendment

Cacciaguidi contends that the “pull-up” system employed by the TC operates to violate her First Amendment rights because it requires that an inmate simply accept “whatever is said or done to her” and does not allow her to defend herself against false allegations. She also argues that pull-ups are given “for saying God” and if an inmate wants to remain in the program they have to “surrender and forfeit the right to say God’s name,” and therefore the TC operates in violation of her free exercise of religion rights under the First Amendment.

Even assuming that Cacciaguidi’s First Amendment rights could be implicated by procedures not allowing her to defend herself against false allegations of misbehavior, the record indicates that such is not the case here. As the district court pointed out, the TC handbook outlines procedures for participants to respond to pull-ups they believe are invalid. Specifically, the handbook provides that “[i]f the member receiving the Pull-up believes the confrontation [verbal pull-up] is motivated by anything other than responsible concern, she must still accept the Pull-up, but may submit a written Pull-up to bring this incident to the attention of staff.” Thus, it is clear pursuant to established procedures that Cacciaguidi had the opportunity to defend herself through written pull-ups if she believed she was being falsely accused, a fact that she does not appear to dispute. In addition, the record indicates that on numerous occasions Cacciaguidi submitted pull-ups and participated in a mediation prior to her dismissal from the

program--thus, her contention that she was unable to speak in defense of herself is belied by the record.

We also agree with the district court that Cacciaguidi failed to state a claim that the First Amendment's Free Exercise Clause was violated by TC personnel allegedly not allowing her to say "God" in TC proceedings. While inmates clearly retain protections afforded by the First Amendment, including its directive that no law shall prohibit the free exercise of religion, free exercise rights are necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987). The protections of the Free Exercise Clause are triggered when prison officials *substantially* burden the practice of an inmate's religion by preventing him from engaging in conduct which he sincerely believes is consistent with his faith. *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 717-18 (1981) (pressure on exercise must be substantial); *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008) (same); *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th Cir. 2005) (same). Under United States Supreme Court jurisprudence, for a governmental regulation to substantially burden religious activity, it must have a tendency to coerce individuals into acting contrary to their religious beliefs and that, conversely, a government regulation does not substantially burden religious activity when it only has an incidental effect that makes it more difficult to practice the religion. *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450-51 (1988).

Here, Cacciaguidi has not shown that the TC's alleged prohibition of saying "God" in TC meetings *substantially* interferes with her religious exercise and is anything more than a mere inconvenience. She has not indicated that not being able to say "God" in the TC proceedings coerces her to act contrary to her religious beliefs and has more than an "incidental effect" making it more difficult to practice her religion. As such, the district court did not err in concluding that Cacciaguidi failed to state a constitutional claim on this issue.

B. Due Process

Cacciaguidi contends numerous times, in various formulations, that the TC rules and practices were, among other things, unfair, subject to manipulation, and promoted lying, and that her rights were violated by her subjection to these TC procedures and ultimately by her dismissal from the TC based on the DOR. It is not entirely clear upon what constitutional basis she asserts

these claims, but she does make several references to the violation of her due process rights and thus we address these claims in this context.

Cacciaguidi makes various allegations in this regard that can be distilled largely to a primary contention that the TC rules, particularly the pull-up system, were manipulated by other inmates and TC staff members whereby they made false accusations against her that ultimately led to her receiving a DOR and then dismissal from the TC program. She contends that the TC process allows offenders to use pull-ups as a means to harass another inmate, without having to prove the validity of the accusation. The target of the pull-up is then not allowed to challenge the veracity of the pull-up, but is required to accept it at face value--a process which, Cacciaguidi contends, violates her right to due process because she was subjected to allegedly false pull-ups without any opportunity to rebut the charges.

The Due Process Clauses of the United States and Idaho Constitutions forbid the government to deprive an individual of life, liberty, or property without due process of law. U.S. Const. amend. XIV; Idaho Const. art. I, § 13. These constitutional protections extend to prisoners, subject to the qualification that incarceration does necessitate the withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. *Briggs v. Kempf*, 146 Idaho 172, 176, 191 P.3d 250, 254 (Ct. App. 2008); *Martin v. Spalding*, 133 Idaho 469, 472, 988 P.2d 695, 698 (Ct. App. 1998). The fact of confinement as well as the legitimate goals and policies of the penal institution limit these retained constitutional rights. *Bell v. Wolfish*, 441 U.S. 520, 546 (1979); *Briggs*, 146 Idaho at 175, 191 P.3d at 253.

To determine whether an individual's due process rights under the Fourteenth Amendment have been violated, a court must engage in a two-step analysis. *Schevers v. State*, 129 Idaho 573, 575, 930 P.2d 603, 605 (1996); *Briggs*, 146 Idaho at 175, 191 P.3d at 253. It must first decide whether the individual's threatened interest is a liberty or property interest under the Fourteenth Amendment. *Id.*; *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 722, 918 P.2d 583, 591 (1996). Only if it finds a liberty or property interest will the court reach the next step, in which it determines the extent of due process procedural protections. *Schevers*, 129 Idaho at 575, 930 P.2d at 605.

To determine whether an inmate has a protected liberty interest, the Idaho Supreme Court adopted the reasoning of the United States Supreme Court from *Sandin v. Conner*, 515 U.S. 472

(1995). *Schevers*, 129 Idaho at 575-77, 930 P.2d at 605-07. In *Sandin*, Conner, a maximum security inmate, was charged with and convicted of misconduct in prison and sentenced to thirty days in disciplinary segregation. Conner filed suit, in part based on alleged deprivations of due process during his disciplinary hearing. The United States Supreme Court decided that shifting from a focus on regulations to a focus on hardship was appropriate and set forth a new standard for determining when a prisoner has a protected liberty interest:

[W]e recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause. But these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless *imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life*.

Sandin, 515 U.S. at 483-84 (emphasis added). The Court took care to note that contrary to Conner's assertion, not every state action taken for a punitive reason encroaches on a liberty interest under the Due Process Clause even in the absence of a state regulation. *Id.* at 484. The Court ultimately concluded that Conner did not have a protected liberty interest in remaining free from disciplinary segregation, because that punishment was not an atypical and significant hardship, did not "present a dramatic departure from the basic conditions of Conner's indeterminate sentence," and "with insignificant exceptions, mirrored those conditions imposed upon inmates in administrative segregation and protective custody." *Id.* at 485-86.

Thus, we must examine whether Cacciaguidi has a liberty interest at stake such that due process protections apply. Again, it is somewhat difficult to discern her exact arguments, but applying a liberal construction to her general argument that the TC rules and procedures violated her due process rights because they were unfair and did not allow her the opportunity to refute the charges against her, requires us to determine whether she had a liberty interest in not being subject to what she claims are unfair TC rules and procedures. An examination of the record convinces us that Cacciaguidi has not shown that the TC rules and procedures impose an atypical and significant hardship in relation to the ordinary incidents of prison life such that a liberty interest was implicated. TC procedures allow for any person who believes they were subjected to an invalid pull-up to submit a written pull-up indicating as much, and the record shows that Cacciaguidi did, in fact, defend herself against what she contends were false charges--both by submitting written pull-ups and by participating in at least one mediation.

In addition, to the extent that she alleges that the TC procedures allowed for other inmates to bring untrue charges against her, in *Sivak v. State*, 130 Idaho 885, 889, 950 P.2d 257, 261 (Ct. App. 1997), we recognized that it is well settled that allegations of verbal harassment and embarrassment are not constitutional violations. *Id.* See also *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987) (“[v]erbal harassment or abuse [of a prisoner] . . . is not sufficient to state a constitutional deprivation under 42 U.S.C. § 1983.”); *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (holding that prisoner’s allegations of threats allegedly made by guards failed to state a cause of action); *Rutledge v. Arizona Board of Regents*, 660 F.2d 1345, 1353 (9th Cir. 1981) (holding that prisoner’s allegations of harassment, embarrassment, and defamation fail to state a claim cognizable under 42 U.S.C. § 1983) *overruled on other grounds as recognized in Wood v. Ostrander*, 879 F.2d 583, 589 (9th Cir. 1989). In sum, while Cacciaguidi may disagree with the TC policies and procedures and feel that they facilitated unfair and dishonest treatment of her, there is no basis for concluding that the imposition of these policies violated a constitutional right.

To the extent that Cacciaguidi argues that her due process rights were violated by her dismissal from the TC, we also conclude that the district court did not err in concluding that this contention was without merit, because it is well settled that a prisoner has no constitutional right to rehabilitation. *State v. Clay*, 124 Idaho 329, 332, 859 P.2d 365, 368 (Ct. App. 1993) (specifically noting that a prisoner does not have a constitutional right to alcohol treatment). Thus, Cacciaguidi had no liberty interest in remaining in the TC program and therefore, there are no procedural due process protections which apply.³

³ We note that even if Cacciaguidi had a due process interest in remaining in the TC program, the record indicates that the requisite due process was followed. In *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455 (1985), adopted by the Idaho Supreme Court in *Cootz v. State*, 117 Idaho 38, 41-42, 785 P.2d 163 (1989), due process is satisfied in a prison disciplinary action if “some evidence” supports the result. The record indicates that Cacciaguidi was terminated from the program after a conflict developed between her and other inmates. A group session was then held, during which Cacciaguidi was confronted about her aggressive behavior. According to a staff member, Cacciaguidi “became visibly distressed and exhibited raised tone, rambling, ending in very aggressive screaming that frightened others in the group.” She was then terminated from the group for exhibiting aggressive behavior. This evidence satisfies the requisite “some evidence” required under due process to validate a prison disciplinary action.

C. Miscellaneous Constitutional Issues

Cacciaguidi also advances, in varying degrees of specificity, several other constitutional rights which she claims were violated by the TC rules and procedures, including the rights against self-incrimination, double jeopardy, bills of attainder, ex post facto laws, and the right to confront witnesses and to equal protection. We have reviewed each claim, and conclude that they have no merit.

III.

CONCLUSION

The district court did not err in affirming the magistrate's decision finding that Cacciaguidi failed to state a constitutional claim entitling her to habeas corpus relief. Thus, we affirm the dismissal of her habeas corpus petition.

Judge LANSING and JUDGE MELANSON **CONCUR.**