

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38309

WILLIAM GRAY,	)	2011 Unpublished Opinion No. 575
	)	
Petitioner-Appellant,	)	Filed: August 8, 2011
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
THE CURRENT WARDEN OF THE ICC,	)	THIS IS AN UNPUBLISHED
SERGEANT MELODEE ARMFIELD,	)	OPINION AND SHALL NOT
	)	BE CITED AS AUTHORITY
Respondents.	)	
_____	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Daniel C. Hurlbutt, District Judge.

Judgment dismissing petition for writ of habeas corpus, affirmed.

William S. Gray, Jr., Orofino, pro se appellant.

Naylor & Hales, P.C.; James R. Stoll, Boise, for respondents.

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LANSING, Judge

William Gray appeals from a summary judgment dismissing his petition for a writ of habeas corpus in which he asserted that he had been deprived of due process in prison disciplinary proceedings. We affirm.

**I.**

**BACKGROUND**

On January 10, 2010, while incarcerated at the Idaho Correctional Center, Gray was placed in segregation for having thrown hot liquid on another inmate in an incident that was recorded on video surveillance cameras. The next day he was served with a disciplinary offense report (DOR) alleging that he committed aggravated battery in the incident. He was found guilty of the DOR on January 25, 2010, after review by a hearing officer. However, on Gray’s administrative appeal to prison authorities, that decision was set aside because “a due process step was not provided in accordance with the IDOC [Idaho Department of Correction]

disciplinary process.” This apparently referred to the hearing officer’s failure to comply with an IDOC policy concerning appointment of staff hearing assistants for inmates charged with DORs. A habeas corpus petition that Gray had filed as an outgrowth of the first DOR review was also ultimately dismissed.

On March 31, 2010, the DOR was rewritten, and Gray requested appointment of a staff hearing assistant to enable him to obtain witness statements. A staff hearing assistant was assigned for the limited purpose of collecting witness statements from individuals identified by Gray, but all but one of these witnesses refused to submit a statement. One witness, a mental health clinician, submitted a statement concerning Gray’s mental status. On April 15, Gray participated in a DOR hearing before a new hearing officer. Gray maintained that he was misidentified as the perpetrator of the battery, which he claimed was demonstrated by the fact that he was originally taken into segregation while wearing the identification card of his cellmate, an error that was corrected an hour later when staff obtained Gray’s proper I.D. card. At Gray’s request, the hearing officer reviewed the surveillance video of the incident. At the conclusion of the hearing, the hearing officer found Gray guilty of the offense on the basis of the video and other evidence. For the initial DOR, his ordered punishment had been thirty days in detention and a ninety-day restriction on commissary, visitation, telephone, property, and recreation privileges. Following the second DOR, the hearing officer reinstated the same sanctions, but only to the extent they had not already been served. After unsuccessfully pursuing an administrative appeal of the hearing officer’s order, Gray filed the present petition for a writ of habeas corpus in the district court, claiming due process violations in the DOR hearings.

The respondents filed a motion for summary judgment asserting, among other things, that Gray’s claims for relief were moot because his period in segregation had ended and all of his privileges had been restored in May 2010, well before the second petition for habeas corpus was filed; and because Gray’s petition failed to state a claim in that he had no liberty interest that would have given rise to a right to due process in the DOR proceedings. The district court granted summary judgment on both of these grounds.<sup>1</sup>

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<sup>1</sup> In addition, the court dismissed the claim against respondent Melodee Armfield on the ground that she was not a proper party under I.C. § 19-4205. Gray does not challenge that determination on appeal.

On appeal, Gray argues that although his period of detention has been served and his suspended privileges restored, his habeas corpus petition is not moot because he suffers from collateral consequences of the DOR, including reclassification to a higher custody level. He also argues that the district court erred in holding that Gray was not deprived of due process.

## II.

### ANALYSIS

In an appeal from a summary judgment, we apply the same standard of review utilized by the district judge when ruling on the motion. *Friel v. Boise City Hous. Auth.*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994); *Freeman v. Idaho Dep't of Corr.*, 138 Idaho 872, 875, 71 P.3d 471, 474 (Ct. App. 2003). Summary judgment may be entered only when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Idaho Rule of Civil Procedure 56(c). Where the evidentiary facts are undisputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences. *Drew v. Sorensen*, 133 Idaho 534, 537, 989 P.2d 276, 279 (1999); *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657, 661 (1982). *See also Hayes v. State*, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008).

To be justiciable, an issue generally must present a real and substantial controversy that is capable of being concluded through a judicial decree of specific relief. *Idaho Sch. for Equal Educ. Opportunity v. Idaho State Bd. of Educ.*, 128 Idaho 276, 281-82, 912 P.2d 644, 649-50 (1996). If the issues presented are no longer live and if the parties lack a legally cognizable interest in the outcome, those issues are not justiciable, but are moot and thereby preclude review. *Id.* at 281, 912 P.2d at 649. A party lacks a legally cognizable interest in the outcome when even a favorable judicial decision would not result in relief. *See Murphy v. Hunt*, 455 U.S. 478, 481-82 (1982). An otherwise moot issue remains justiciable, however, if the challenged conduct persists in causing collateral legal consequences for the challenger. *Butler v. State*, 129 Idaho 899, 900-01, 935 P.2d 162, 163-64 (1997), *abrogated on other grounds by Rhoades v. State*, 149 Idaho 130, 137, 233 P.3d 61, 68 (2010); *State v. Alldredge*, 96 Idaho 7, 8, 523 P.2d 824, 825 (1974); *Adams v. Killeen*, 115 Idaho 1034, 1035, 772 P.2d 241, 242 (Ct. App. 1989); *Russell v. Fortney*, 111 Idaho 181, 182, 722 P.2d 490, 491 (Ct. App. 1986). Because Gray

asserts that he suffers collateral consequences from the challenged DOR, we will assume, *arguendo*, that his habeas corpus action is not moot and will address Gray's claim that he was deprived of due process in the DOR proceeding.

To determine whether an individual's due process rights under the Fourteenth Amendment to the United States Constitution have been violated, a court must undertake a two-step analysis. It first must decide whether the individual's threatened interest is a liberty or property interest under the Fourteenth Amendment. *Schevers v. State*, 129 Idaho 573, 575, 930 P.2d 603, 605 (1996); *Smith v. Meridian Jt. Sch. Dist. No. 2*, 128 Idaho 714, 722, 918 P.2d 583, 591 (1996). Only if the court finds a liberty or property interest will it proceed to the next step, in which it determines the extent of due process procedural protections. *Smith*, 128 Idaho at 722, 918 P.2d at 591. In *Sandin v. Conner*, 515 U.S. 472 (1995), the United States Supreme Court considered the circumstances in which an inmate would possess a liberty interest that would entitle the inmate to due process in prison disciplinary proceedings. The Court stated:

[T]hese 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.

*Id.* at 484 (citations omitted). The Supreme Court then held that the inmate in *Sandin* did not have a protected liberty interest in remaining free from disciplinary segregation because that punishment is not an atypical and significant hardship. *Id.* at 486. Accordingly, when analyzing due process and liberty interests in the context of punishment of incarcerated prisoners for DORs, the first question is whether the punishment imposed represents "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." In *Sandin*, the Court held that a sentence of thirty days in disciplinary segregation did not represent such atypical hardship as to create a liberty interest. Rather, "with insignificant exceptions, [it] mirrored those conditions imposed upon inmates in administrative segregation and protective custody." *Id.* at 486. Similarly in *Schevers*, the Idaho Supreme Court held that an inmate claiming a deprivation of due process in disciplinary proceedings that resulted in punishment of fifty-five days in restrictive custody (or disciplinary segregation confinement) does not give rise to a protected liberty interest. The Court recognized that, given that the inmate was originally in minimum security, his move to disciplinary segregation and a subsequent reclassification to medium

security presented a definite change, particularly the loss of some minimum security privileges, including work privileges, television, radio, tobacco, coffee, hobby craft, and access to his personal property. The Court concluded, however, that deprivation of those items did not represent a serious departure from what would normally be expected from prison life. *Schevers*, 129 Idaho at 577, 930 P.2d at 607.

When we apply the standards enunciated in *Sandin* and *Schevers*, it is apparent that Gray has not demonstrated that he had a liberty interest entitling him to due process in the disciplinary hearing. Gray received thirty days of disciplinary segregation and ninety days of commissary, visitation, phone, property, and recreation restrictions for the DOR. (Some of these periods were served pursuant to the first conviction that was set aside, and the balance pursuant to the second conviction.) This appears to be less severe than the punishment and consequences that the Idaho Supreme Court found not to be atypical and significant hardship in *Schevers*. Accordingly, the district court did not err in holding that Gray has not demonstrated a deprivation of a liberty interest that would implicate due process protections.

The judgment of the district court dismissing Gray's petition for a writ of habeas corpus is affirmed.

Chief Judge GRATTON and Judge GUTIERREZ CONCUR.