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United States Court of Appeals, Tenth Circuit.
Lee TRAYLOR, Plaintiff-Appellant,

v.

Robert K. DENTON; Rob P. Melton; Douglas
Byrd, Defendants-Appellees.
No. 94-6088.

Nov. 1, 1994.

ORDER AND JUDGMENT ^{FN1}

Before MOORE and ANDERSON, Circuit
Judges, and BRIMMER, ^{FN**} District Judge.

*1 After examining the briefs and appellate record,
this panel has determined unanimously that oral
argument would not materially assist the
determination of this appeal. See Fed.R.App.P.
34(a); 10th Cir. R. 34.1.9. The case is therefore
ordered submitted without oral argument.

Plaintiff Lee Traylor appeals from the district
court's grant of summary judgment on his claims
brought pursuant to 42 U.S.C.1983. Traylor, an
inmate in the custody of the Oklahoma Department
of Corrections, claims that defendants, department
employees, violated his due process rights in
connection with a misconduct charge and
subsequent hearing and punishment. He also
claims that they racially discriminated and
conspired against him in investigating the alleged
misconduct.

Defendants filed a report pursuant to *Martinez v.*

Aaron, 570 F.2d 317 (10th Cir.1978), and moved
for dismissal. The magistrate judge to whom the
case had been referred converted the motion to one
for summary judgment, gave Traylor an opportunity
to respond, and then recommended that the motion
be granted. Traylor filed objections to the report
and recommendation. The district court adopted
the magistrate judge's report and recommendation
and granted summary judgment in favor of
defendants.

We review a grant of summary judgment de novo.
*Applied Genetics Int'l, Inc. v. First Affiliated Sec.,
Inc.*, 912 F.2d 1238, 1241 (10th Cir.1990).
Because Traylor proceeds pro se, we construe his
pleadings liberally. *Estelle v. Gamble*, 429 U.S.
97, 106 (1976). Because he is the nonmovant, we
view the facts and draw all inferences in his favor.
Deepwater Invs., Ltd. v. Jackson Hole Ski Corp.,
938 F.2d 1105, 1110 (10th Cir.1991).

Viewed in the required light, the record indicates
after notice, Traylor was segregated from the
general prison population at a medium security
prison and placed in the residential housing unit
pending investigation of a charge of sexual
menacing. Four days later, defendant Byrd
prepared a facility transfer form recommending that
Traylor be transferred to the Oklahoma State
Penitentiary, a maximum security facility. The
form, also signed by defendant Denton, stated
Traylor was being transferred because he had "been
identified as a sexual predator" and was "
considered a severe threat to institutional security
and stability."

Defendant Denton investigated the incident and
referred the matter for a disciplinary hearing. A
disciplinary hearing was held, but Traylor refused
to attend. The disciplinary officer, defendant Byrd,
found Traylor guilty of the misconduct. As the
basis for the punishment imposed, Byrd wrote "Mr.
Traylor's behavior creates extremely severe security
concerns, and are not consistent with any of our

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society's guidelines." He imposed punishment of fifteen days' disciplinary segregation, loss of ninety earned credits, and loss of thirty days' canteen privileges. Defendant Melton, as acting warden, denied Traylor's first-level appeal.

*2 After having his transfer approved and after serving his disciplinary segregation, Traylor was placed on "transit detention" pending his transfer to the maximum security state penitentiary. He was transferred subsequently. Traylor appealed the misconduct to the department director who ordered a rehearing because the disciplinary officer had not properly certified the reliability of a confidential witness's testimony. At the rehearing, which was before a new disciplinary officer and was at the state penitentiary, Traylor was found not guilty of the misconduct because there was insufficient evidence and the offense form was outdated. Traylor's earned credits were apparently restored, but he was not transferred back to the medium security facility.

On this appeal, Traylor claims that he was deprived of procedural due process because of the failure to comply with various state disciplinary procedures and because of the denial of an impartial decisionmaker at his first disciplinary hearing. He claims that Byrd and Denton conspired against him to deny him due process. He also claims that he was a victim of racial discrimination because he was investigated for assaulting a white inmate but not for assaulting a black inmate.

We agree with the district court that Traylor has not shown intentional discrimination or agreement and actions by defendants to discriminate against him and that his discrimination and conspiracy claims therefore fail. See, e.g., *Koch v. City of Hutchinson*, 814 F.2d 1489, 1495 (10th Cir.1987), cert. denied, 488 U.S. 909 (1988); *Durre v. Dempsey*, 869 F.2d 543, 545 (10th Cir.1989). We also agree that no federal rights were infringed by Traylor's transfer to the maximum security facility, even if it was done as punishment, *Montanye v. Haymes*, 427 U.S. 236, 242-43 (1976), or by his placement in administrative segregation for investigation and transit detention where there is no indication that state law or regulations limited

prison authorities' discretion to do so, *Hewitt v. Helms*, 459 U.S. 460, 466-67 (1983); *Templeman v. Gunter*, 16 F.3d 367, 369 (10th Cir.1994). Further, Traylor's due process claim regarding noncompliance with state procedures fails because state procedures do not define what is required under federal due process. *Glatz v. Kort*, 807 F.2d 1514, 1517 n. 4 (10th Cir.1986).

We do, however, conclude that Traylor legitimately raises the issue of whether he was deprived of his due process right to an unbiased decisionmaker at his first disciplinary hearing. FN2 An impartial decisionmaker is a fundamental due process requirement, see, e.g., *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975), that is fully applicable in the prison context. *Malek v. Camp*, 822 F.2d 812, 815-16 (8th Cir.1987); see also *Smith v. Maschner*, 899 F.2d 940, 947 (10th Cir.1990) (recognizing due process requirement of factfinders' neutrality in prison disciplinary context) (citing *Wolff v. McDonnell*, 418 U.S. 539, 571 (1974) (existence of a "hazard of arbitrary decision making" may violate due process)); *Diercks v. Durham*, 959 F.2d 710, 713 (8th Cir.1992) (finding it clearly established in 1988 that charging officer cannot sit in judgment in disciplinary hearing). There must be a substantial showing of bias to prevail on this type of claim. *Withrow*, 421 U.S. at 47, 58 (claim of bias "must overcome presumption of honesty and integrity in those serving as adjudicators" and present situation in which the "risk of unfairness is intolerably high"); *Corstvet v. Boger*, 757 F.2d 223, 229 (10th Cir.1985). Prison officials with only remote involvement in a disciplinary case are not precluded from sitting in judgment. *Meyers v. Aldredge*, 492 F.2d 296, 306 (3d Cir.1974).

*3 The evidence here shows that shortly after the alleged misconduct and prior to the hearing, defendant Byrd recommended Traylor's transfer to the state penitentiary in large part because of the alleged misconduct. A reasonable inference is that prior to the hearing, Byrd had already concluded that Traylor was guilty of the misconduct and was therefore biased against him before the hearing began. See *Staton v. Mayes*, 552 F.2d 908, 914 (10th Cir.) (finding bias where hearing preceded by "statements on the merits by those who must make

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factual determinations on contested fact issues"), *cert. denied*, 434 U.S. 907 (1977). This inference of bias is sufficient to defeat defendants' summary judgment motion. Byrd's precise role and level of involvement in the matter prior to the hearing is unclear from the record before us. Unlike *Staton*, we cannot say that as a matter of law, Byrd was biased and that his acting as disciplinary officer violated Traylor's due process rights. The district court will have to determine that on remand.

We disagree with the magistrate judge who commented that even if the disciplinary hearing denied Traylor due process, Traylor had no claim because the reversal on administrative appeal cured the violation, citing *Young v. Hoffman*, 970 F.2d 1154, 1156 (2d Cir.1992), *cert. denied*, 114 S.Ct. 115 (1993), which in turn relied on *Harper v. Lee*, 938 F.2d 104, 105-06 (8th Cir.1991). Both cases are inapposite because the prisoners experienced no harm as a result of the denial of due process.

In contrast, Traylor had already served his disciplinary segregation time prior to the administrative reversal and dismissal of charges on rehearing. He apparently experienced harm as a result of the initial disciplinary hearing, and that harm does not seem to have been cured. His claim is therefore colorable. *See Carey v. Piphus*, 435 U.S. 247, 266 (1978); *see also Diercks*, 959 F.2d at 712, 714 (upholding jury award of \$3,600 in actual damages for segregation resulting from improper disciplinary proceedings).

Defendants also raise Eleventh Amendment and qualified immunities as alternative grounds for affirmance. To the extent Traylor is suing defendants in their official capacities, his claim fails because it is barred by Eleventh Amendment immunity. *See Wallace v. Oklahoma*, 721 F.2d 301, 303-04 (10th Cir.1983). That conclusion, however, does not reach the defendants in their individual capacities. We agree with *Diercks'* conclusion that the law requiring an unbiased decisionmaker was clearly established prior to the events in this case. 959 F.2d at 713. Traylor has presented sufficient facts and allegations to show that defendants may have violated that clearly established right. *See Patrick v. Miller*, 953 F.2d

1240, 1251 (10th Cir.1992).

The judgment of the United States District Court for the Western District of Oklahoma is REVERSED and the case is REMANDED for proceedings consistent with this order and judgment.

FN1. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470.

FN** Honorable Clarence A. Brimmer, District Judge, United States District Court for the District of Wyoming, sitting by designation.

FN2. Defendants contend that Traylor did not present this issue to the district court and has therefore waived it. Traylor clearly raised this issue in his objections to the magistrate judge's report. In addition, though he couched it in terms of a state procedural violation, he also challenged Byrd's acting as decisionmaker in his opposition to summary judgment and in his first administrative appeal.

Defendants do not, and indeed, could not seriously contend that Traylor was not entitled to due process prior to his disciplinary segregation. *See Frazier v. DuBois*, 922 F.2d 560, 563 (10th Cir.1990) (placing inmate in segregation as punishment requires due process); *Frock v. District Court*, 630 P.2d 772, 777-78 & n. 12 (Okla.1981).

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Briefs and Other Related Documents

This case was not selected for publication in the Federal Reporter. This case was not selected for publication in the Federal Reporter. Please use FIND to look at the applicable circuit court rule before citing this opinion. Tenth Circuit Rule 36.3. (FIND CTA10 Rule 36.3.)

United States Court of Appeals, Tenth Circuit.
John A. HUDSON, III, Plaintiff-Appellant,
v.

Ron WARD, Director of Oklahoma Department of Corrections; Steven Beck, Warden; Darrell Alton, Case Manager; Jessie Sutter, Deputy Warden; Valerie Couch, Officer; Bruce Howard, Deputy Warden; Bob Seaton, Case Manager; and, Killian, Correctional Officer, Defendants-Appellees.
No. 03-7117.

Feb. 14, 2005.

Background: State inmate brought § 1983 action against Oklahoma Department of Corrections (DOC) employees, alleging that they violated his right to due process by depriving him of the opportunity to earn good-time credits and revoking several days of earned good-time credits. The district court granted summary judgment for defendants. Inmate appealed.

Holdings: The Court of Appeals, Baldock, Circuit Judge, held that:

- (1) inmate waived his argument regarding revocation of 365 days of good-time credits by failing to raise it in the district court;
- (2) revocation of credits that were later returned to defendant did not violate due process; and
- (3) inmate's status reclassification, which

diminished his opportunity to earn good-time credits, did not implicate a liberty interest implicated by due process.

Affirmed.

West Headnotes

[1] Federal Courts 170B ⇨612.1

170Bk612.1 Most Cited Cases

State inmate who brought § 1983 action against Oklahoma Department of Corrections (DOC) employees waived his argument regarding the revocation of 365 days of good-time credits when he failed to raise it in the district court. 42 U.S.C.A. § 1983.

[2] Constitutional Law 92 ⇨272(2)

92k272(2) Most Cited Cases

Prisons 310 ⇨15(5)

310k15(5) Most Cited Cases

Revocation of 4100 days of good-time credits did not violate state inmate's due process rights, so as to warrant relief under § 1983, since those credits were returned to inmate and did not ultimately have any impact on his sentence. U.S.C.A. Const.Amend. 14 ; 42 U.S.C.A. § 1983.

[3] Constitutional Law 92 ⇨272(2)

92k272(2) Most Cited Cases

Prisons 310 ⇨15(3)

310k15(3) Most Cited Cases

State inmate's status reclassification, which merely diminished his opportunity to earn good-time credits, did not implicate a liberty interest protected by due process, so as to warrant relief under § 1983. U.S.C.A. Const.Amend. 14 ; 42 U.S.C.A. § 1983 ; 57 Okl.St. Ann. § 138(B), (D)(4).

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*600 Raymond P. Moore , Fed. Public Defender,
Howard A. Pincus , Office of the Federal Public
Defender, Denver, CO, for Plaintiff-Appellant.
John A. Hudson, III, Denver, CO, pro se.
Karin M. Kriz , Office of the Attorney General , J.
Kevin Behrens, Oklahoma Attorney General,
Oklahoma City, OK, for Defendants-Appellees.

Before TACHA , Chief Circuit Judge, BALDOCK ,
and EBEL, Circuit Judges.

ORDER AND JUDGMENT ^{FN*}

FN* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

BOBBY R. BALDOCK, Circuit Judge.

**1 Plaintiff John A. Hudson, III sued various Oklahoma Department of Corrections employees (collectively "ODC") under 42 U.S.C. § 1983, seeking compensatory damages for the alleged unconstitutional taking of good-time credits during his incarceration. Plaintiff alleged, among other things, the ODC violated the Fourteenth Amendment Due Process Clause when it deprived him of the opportunity to earn good-time credits and revoked several days of earned good-time credits.

The district court granted Defendants' motion for summary judgment. The court found Plaintiff did not have a Fourteenth Amendment liberty interest in a particular prison classification. The court also found Plaintiff was obligated to show his conviction or sentence had been invalidated under the "favorable termination" rule established in *Heck v. Humphrey*, 512 U.S. 477, 487, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), because he sought compensatory damages for an alleged unconstitutional incarceration. Plaintiff failed to show his sentence had been invalidated. Accordingly, the court found Plaintiff's claims were

non-cognizable under § 1983.

We review the district court's grant of summary judgment *de novo*, applying the same standards as the district court, and affirm. *See Cummings v. Norton*, 393 F.3d 1186, 1189 (10th Cir.2005). In doing so, we hold Plaintiff has failed to establish any constitutional violation and therefore need not address the district court's alternative finding under *Heck's* favorable termination rule.

I.

The historical facts, construed in a light most favorable to Plaintiff, are as follows: Prior to July 2001, Plaintiff earned good-time credits at the rate of forty-four days per month pursuant to his "level 4" prison classification. *See generally* 57 Okla. Stat. Ann. § 138(D)(2)(a). The ODC transferred Plaintiff to a minimum security facility in late July 2001. Thereafter, the ODC reassigned Plaintiff to a "level 1" status, in which he did not earn any good-time credits. *See id.* Plaintiff informally complained of his reclassification but did not file a formal grievance.

The ODC subsequently notified Plaintiff his sentence would be discharged on December 21, 2001. On December 12, however, the ODC changed Plaintiff's discharge date because of his "level change." Plaintiff's case manager informed Plaintiff that his new discharge date would be in February 2002. Plaintiff became indignant and threatened his case manager. As a result of Plaintiff's misconduct, the ODC *601 revoked 365 days of Plaintiff's good-time credits.

In February 2002, the ODC revoked another 4100 days of Plaintiff's earned good-time credits because of an alleged GED program failure. The revocation increased Plaintiff's remaining sentence by 4,593 days. Plaintiff filed a formal grievance with the ODC. The ODC denied his request for administrative relief. Plaintiff filed this § 1983 suit in June 2002. The district court ordered the ODC to submit an investigative report detailing Plaintiff's allegations. After conducting an investigation, the ODC determined insufficient documentation existed

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to confirm Plaintiff's GED program failure. Accordingly, the ODC restored Plaintiff's 4100 days of earned good-time credits in November 2002. At that time, Plaintiff had ninety-eight days remaining on his sentence. Plaintiff discharged his sentence on January 10, 2003.

II.

**2 [1] [2] On appeal, Plaintiff argues, among other things, the ODC violated the Due Process Clause when it: (1) changed his class level from a level 4 to a level 1, depriving him of the opportunity to earn good-time credits; (2) revoked 365 days of good-time credits after he threatened his case manager; and (3) revoked 4100 days of good-time credits for the alleged GED program failure. ^{FN1} We initially note Plaintiff waived his argument regarding the revocation of 365 days of good-time credits because he did not raise that argument in the district court. See *Wares v. Simmons*, 392 F.3d 1141, 1143 (10th Cir.2004). We also summarily reject Plaintiff's argument that the revocation of his 4100 days of good-time credits somehow violated the Due Process Clause because those credits were returned to Plaintiff and the temporary taking of those credits did not have any impact on Plaintiff's sentence. See *Morgan v. McCotter*, 365 F.3d 882, 889 (10th Cir.2004).

FN1. Plaintiff also raises claims under the Eighth Amendment and Equal Protection Clause. Plaintiff has not provided any evidence or analysis supporting his claims and we are not required to fashion Plaintiff's arguments for him. See *United States v. Fisher*, 38 F.3d 1144, 1147 (10th Cir.1994).

[3] The only issue remaining, then, is whether Plaintiff's reclassification from a level 4 status to a level 1 status, which merely diminished his opportunity to earn good-time credits, implicated a liberty interest protected by due process. We hold that it did not. A prisoner may be accorded relief for the deprivation of good-time credits if he can demonstrate that "the State's action ... inevitably

affect[ed] the duration of his sentence." *Sandin v. Conner*, 515 U.S. 472, 487, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995); see also *Luken v. Scott*, 71 F.3d 192, 193 (5th Cir.1995). A prisoner is not entitled to due process protection for State action that might affect the duration of his sentence. See *Sandin*, 515 U.S. at 487, 115 S.Ct. 2293. Relevant here, when the decision to award good-time credits "rests on a myriad of considerations," the chance that the decision will inevitably affect the duration of his sentence is "too attenuated to invoke the procedural guarantees of the Due Process Clause." *Id.*; see also *Meachum v. Fano*, 427 U.S. 215, 229-30, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976) (holding changing a prisoner's classification ordinarily does not deprive him of liberty); see *Twyman v. Crisp*, 584 F.2d 352, 356-57 (10th Cir.1978) (noting "the loss of the opportunity to earn good time credit ... because of reclassification does not deprive a prisoner of a constitutional right.").

*602 In Oklahoma, the decision to classify a prisoner and the corresponding right to earn good-time credits is purely discretionary and rests on a myriad of considerations. 57 Okla. Stat. Ann. § 138(B), (D)(4). ^{FN2} The assignment of each prisoner to a particular class level is based upon subjective criteria, such as ranking inmates on a scale ranging from "poor" to "outstanding." *Id.* § 138(D)(1), (4). Further, the ODC's adjustment review committee retains complete discretion to assign and reassign inmates to a particular class level based upon other subjective factors, such as a prisoner's ability to maintain good personal hygiene, a clean living area, and evaluations of work and education assignments. *Id.* Accordingly, a prisoner in Oklahoma is never guaranteed a particular classification; rather, assuming a prisoner meets all relevant criteria, he may be assigned to a class in which he can earn good-time credit.

FN2. Of course, once a prisoner earns good-time credits, the State may not revoke those credits without due process of law. See 57 Okla. Stat. Ann. § 138(A); *Wolff v. McDonnell*, 418 U.S. 539, 557, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

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**3 In this case, Plaintiff does not argue the ODC took away any of his *earned* good-time credits when it transferred him to a minimum security facility in July 2001. Instead, Plaintiff argues the ODC violated the Due Process Clause when it reclassified him from a level 4 to a level 1 status, which merely affected the amount of good-time credits he could earn. We disagree. The ODC's decision to assign Plaintiff to a particular class level did not *inevitably affect* the duration of Plaintiff's sentence because that decision was purely discretionary. Thus, Plaintiff did not have any legitimate expectation he would be assigned, nor was he *entitled*, to a particular class level. Instead, the ODC was free to reassign Plaintiff to a different class level based upon the many enumerated subjective factors listed in the statute. *See Twyman*, 584 F.2d at 356-57. Accordingly, Plaintiff did not suffer any deprivation implicating a liberty interest.

Based on the foregoing, the district court's order is

AFFIRMED. ^{FN3}

FN3. Plaintiff's "Motion to Insufficiency of the Evidence to Support Verdict" is also denied.

C.A.10,2005.

Hudson v. Ward

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Briefs and Other Related Documents (Back to top)

- 03-7117 (Docket) (Nov. 10, 2003)
- 2003 WL 23531837 (Appellate Brief) Brief of Appellees (2003) Original Image of this Document (PDF)

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