

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted August 28, 2024*

Decided August 28, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-1779

ROGER SIMS,
Plaintiff-Appellant,

v.

JASON JESTER, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Central District of Illinois.

No. 20-CV-1055

Sue E. Myerscough,
Judge.

ORDER

Illinois prisoner Roger Sims, who goes by the last name “Sims-Bey,” alleged that prison officials violated his rights under the First and Fourteenth Amendments, *see* 42 U.S.C. § 1983, when they placed him in segregation and prevented him from attending religious meetings based on allegations that he held a leadership position in

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

religious activities. The district court entered summary judgment for the officials, and because Sims-Bey fails to identify a genuine dispute of material fact, we affirm.

We recount the summary-judgment record in the light most favorable to Sims-Bey. *See Kemp v. Liebel*, 877 F.3d 346, 350 (7th Cir. 2017). In October 2018, Sims-Bey, who belongs to the Moorish Science Temple of America, was incarcerated at the Illinois River Correctional Center, where he participated in the Moorish Science Temple religious group. On October 17, Sims-Bey's cell was selected for an apparently random search. Correctional officers confiscated materials including his Koran,¹ religious pamphlets, and documents related to his religious group meetings. Eventually, the materials were returned, except for six pages. One contained handwritten tallies for elected positions including Grand Sheik of the prison's Moorish Science Temple group.

Prison officials opened an investigation to determine whether Sims-Bey had been elected as Grand Sheik in violation of Rule 425 of the Illinois Department of Corrections ("Department"), which prohibits prisoners from holding leadership positions in religious activities. 20 ILL. ADMIN. CODE § 425.60(e) (1995). Sims-Bey met with Jason Jester, the correctional officer who led the investigation. Jester's report states that Sims-Bey admitted his role as Grand Sheik and acknowledged that the handwritten tallies represented votes from the Moorish Science Temple group's 2018 elections. Sims-Bey denies making those statements. After the investigation, prison officials sought guidance from the Department's Religious Practice Advisory Board, which reviewed Jester's report and recommended that prison officials discipline Sims-Bey. *See id.* § 425.40(b)(1); Ill. Dep't of Corr., Admin. Directive 04.25.101(G) (2018).

Accordingly, on October 30, Jester wrote a disciplinary ticket against Sims-Bey for violating Department Rule 425, as well as four Department rules prohibiting leadership activity, unauthorized organizational activity, abuse of privileges, and violations of facility rules. *See* 20 ILL. ADMIN. CODE § 504.APP. A (111), (205), (310), (404). Because the charged offenses were "major infractions," a hearing before the Adjustment Committee was scheduled. *See id.* §§ 504.60, 504.80.

On November 12, Sims-Bey appeared before the Adjustment Committee, made up of two correctional officers who were not involved in the investigation. He

¹ The Moorish Science Temple's Holy Koran is distinct from the Quran of Islam. The two texts bear little resemblance to one another. *See* BRITANNICA, *Moorish Science Temple of America*, <https://www.britannica.com/topic/Moorish-Science-Temple-of-America> (last updated July 19, 2024).

presented one live witness and his own written statement in his defense. The Adjustment Committee found Sims-Bey guilty of the charged violations, and as a result, imposed three months of disciplinary segregation, among other penalties.

On November 16, Sims-Bey tried to attend a Moorish Science Temple meeting but was intercepted and brought to a segregation unit to serve his penalty. He remained there through February 12, 2019. During that time, he could not attend his religious group meetings, but he had a Koran and could speak to the prison's chaplain. He could also pray and maintain his no-pork diet.

After Sims-Bey appealed, the Department's Administrative Review Board ("Board") ordered a rehearing—at Lawrence Correctional Center, where Sims-Bey had been transferred—so that an incorrect date could be changed on the disciplinary ticket and the Adjustment Committee could further explain its decision (including the role of confidential sources) in its hearing summary. Because of a court writ, Sims-Bey could not attend the rehearing at Lawrence. The Adjustment Committee again found him guilty. But on appeal, the Board concluded that the explanation of Sims-Bey's conduct in the disciplinary ticket and rehearing report failed to substantiate the charges. Thus, the disciplinary ticket and guilty findings were expunged from Sims-Bey's record. *See* 20 ILL. ADMIN. CODE § 504.80(q)(1)(C).

Sims-Bey filed this lawsuit against sixteen guards and administrators at the Illinois River and Lawrence facilities and two members of the Department's Religious Practice Advisory Board. The district court screened his complaint and determined that Sims-Bey could proceed on First and Fourteenth Amendment claims that the defendants interfered with his practice of religion, retaliated against him because of his religion, and violated his due process rights. *See* 42 U.S.C. § 1983.

The parties eventually filed cross-motions for summary judgment. The district court granted the defendants' motion and denied Sims-Bey's motion. The court first determined that Sims-Bey's First Amendment free exercise claim failed because the facts showed that officials had an adequate basis to suspect that Sims-Bey held a position of authority, and so penalties were justified by legitimate security concerns. The court further explained that even if Sims-Bey was merely the "acting" Grand Sheik with no actual authority over other inmates, his title alone gave the "implication and appearance" of authority. The court also determined that Sims-Bey's First Amendment retaliation claim could not succeed because the defendants had evidence that they placed him in segregation out of concerns for institutional security, whereas Sims-Bey only speculated that the defendants acted out of religious animus. Finally, the court

concluded that Sims-Bey's procedural due process claim failed because he was provided all necessary avenues to challenge his disciplinary conviction, and regardless, placement in segregation for three months did not implicate a protected liberty interest.

Sims-Bey now appeals, and we review the summary judgment ruling de novo. *See Henry v. Hulett*, 969 F.3d 769, 776 (7th Cir. 2020) (en banc). Sims-Bey first argues that the district court improperly discredited his affidavit opposing the defendants' motion. Specifically, he asserts that the court failed to credit his statements that he held only an "acting" position and that the group did not hold formal elections in 2018.

Sims-Bey is mistaken; there is no indication that the district court discredited his affidavit. The court explained that it relied on the material facts "as stated by [Sims-Bey] in his affidavit and as established by other evidence of record." The district court noted that his affidavit stated he "[did] not have a position of unauthorized authority or power over anyone" and did not "ha[ve] any unauthorized elections in ... September 2018." The court then concluded that, even taking these statements as true, at most they established that Sims-Bey did not violate Department rules—not that the defendants violated his constitutional rights in the course of the disciplinary proceedings.

Sims-Bey does not take specific issue with the district court's assessment of the merits of his claims (emphasizing instead that his affidavit created a factual dispute), but he generally asserts that he was placed in segregation without due process and that, while there, he could not freely exercise his religion. We can address the merits of these arguments. Accepting Sims-Bey's attestations at face value, however, he did not raise a genuine issue of material fact with respect to his free-exercise and due-process claims.

First, the record shows that Sims-Bey was not substantially burdened in his ability to practice religion. For this claim to survive summary judgment, Sims-Bey needed evidence from which "a jury could reasonably find that the defendants personally and unjustifiably placed a substantial burden on his religious practices." *Thompson v. Holm*, 809 F.3d 376, 379 (7th Cir. 2016) (citations omitted). A substantial burden puts "pressure on an adherent to modify his behavior and to violate his beliefs," *Thomas v. Review Bd.*, 450 U.S. 707, 718 (1981), and is unjustified if it is "not reasonably related to a legitimate penological interest," *Thompson*, 809 F.3d at 380 (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). Here, Sims-Bey was not pressured to alter his religious practice or violate his beliefs: He was placed in segregation but still had his Koran, spoke to the chaplain, and maintained his diet and prayer schedule. And the prison's decision to forbid his attendance at Moorish Science Temple meetings did not infringe on his right to freely practice because the defendants showed a legitimate penological

interest—security and safety concerns related to his influence as “acting” Grand Sheik—for the limits on his congregative activities.

Second, Sims-Bey believes that the Board’s ultimate conclusion that the updated disciplinary ticket and rehearing report failed to substantiate the charges shows that he was deprived of due process. In some cases, a successful appeal alone demonstrates that a prisoner received due process—but not, as in this case, when the appeal does not correct the procedural defects before the punishment is carried out. *Morissette v. Peters*, 45 F.3d 1119, 1121–22, n.4 (7th Cir. 1995). Still, the fact that the guilty findings were later expunged does not mean that the rehearing failed to satisfy minimal procedural requirements. *See Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006). Before a prisoner can be deprived of a protected liberty interest, due process requires that he receive notice of the claimed violation, an opportunity to be heard by calling witnesses and presenting evidence, and a written statement from the decisionmaker explaining the evidence relied on in imposing discipline. *Wolff v. McDonnell*, 418 U.S. 539, 563, 566 (1974). Sims-Bey does not dispute that he received notice and a written statement from the rehearing (which was not substantive), and he had the opportunity to be heard when he presented his statement and testimony at his first hearing. Further, he has not argued that there was not at least “some evidence” supporting the violation. *See Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454 (1985).

In any event, as the district court concluded, Sims-Bey did not meet the threshold requirement of establishing that his placement in segregation deprived him of a protected liberty interest. This would require evidence that his disciplinary segregation imposed an atypical and significant hardship that departed from ordinary incidents of prison life, considering both the conditions and duration of segregation. *See Sandin v. Conner*, 515 U.S. 472, 484 (1995); *Marion v. Columbia Corr. Inst.*, 559 F.3d 693, 697 (7th Cir. 2009). But there is no evidence about the conditions in segregation, and we have held that three months in a segregation cell, without more, is not an atypical and significant hardship. *See Lisle v. Welborn*, 933 F.3d 705, 721 (7th Cir. 2019); *Marion*, 559 F.3d at 698.

Finally, Sims-Bey does not mention in his brief his claim that prison officials retaliated against him for his religious beliefs. Although we have construed his brief liberally, Sims-Bey’s failure to develop any argument about this claim is a waiver. *See Hackett v. City of South Bend*, 956 F.3d 504, 510 (7th Cir. 2020).

AFFIRMED