

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DAVID BEAUDETTE,)
)
 Plaintiff)
)
 v.) Civil No. 94-0073-B
)
 JOSEPH LEHMAN,¹ et al.,)
)
 Defendants)

MEMORANDUM OF DECISION²

Pursuant to the Court's Memorandum of Decision dated April 3, 1995, Plaintiff has filed a Motion for Summary Judgment on the sole issue of whether Plaintiff had a liberty interest in connection with the disciplinary proceeding that is the subject of his action.³ Defendants have responded to the Motion, and have moved for summary judgment in their favor on this ground, as well as others.

Discussion

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, 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." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994)

¹ Joseph Lehman is the Commissioner of the Maine Department of Corrections, and replaces his predecessor in this action pursuant to Federal Rule of Civil Procedure 25(d)(1).

² Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

³ Plaintiff limits his argument to his loss of good time.

(quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

Plaintiff argues that he is entitled to judgment on the question whether Plaintiff's allegations implicate a liberty interest that is protected under the Constitution. He bases this conclusion on an analysis of the statutory language which provides that prisoners in the State of Maine receive a deduction in their sentences "for observing all the rules of the department and the institution." At the time Plaintiff filed his Motion, the question whether the language was framed in mandatory, rather than discretionary, terms was the sole inquiry. *Hewitt v. Helms*, 459 U.S. 460, 466 (1983).

Since that time, the Supreme Court has backed away from this analysis, which the Court found "encouraged prisoners to comb regulations in search of mandatory language on which to base entitlements to various state-conferred privileges." *Sandin v. Conner*, 115 S. Ct. 2293, 2299 (1995). In its place, the Court held that protectable liberty 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 2230 (citations omitted).

In *Sandin*, the plaintiff was placed in segregated confinement as a result of a disciplinary action. The Court found this type of confinement "did not exceed similar, but totally discretionary confinement in either duration or degree of restriction," and hence, "did not work a major disruption in his environment." *Id.* at 2301. The Court went one step further, however, and distinguished the

plaintiff's 30 day confinement from those situations where "the State's action will inevitably affect the duration of his sentence." *Id.* at 2302.

Applying the ruling in *Sandin* in the case of good time credits necessarily leads to a review of the language of the statutory provision at issue. However, rather than looking to whether the language is phrased in mandatory terms, we now look to whether a deprivation of good times credits is an "atypical and significant hardship," or "inevitably affects the duration of [Plaintiff's] sentence."

The statute at issue provides, in pertinent part:

3. [A] person sentenced to imprisonment for more than 6 months is entitled to receive a deduction of 10 days each month for observing all rules of the department and institution. . . .

. . .

6. Any portion of the time deducted from the sentence of any person pursuant to subsection 3 or 3-B may be withdrawn by the supervising officer of the institution for the infraction of any rule of the institution, for any misconduct or for the violation of any law of the State. The withdrawal of deductions may be made at the discretion of the institution head, in accordance with policies and guidelines established by the Department of Corrections, who may restore any portion thereof if the person's later conduct and outstanding effort warrant that restoration.

17-A M.R.S.A. § 1253.

As a preliminary matter, the statute makes clear that a loss of good time does not inevitably affect the duration of the sentence, as the good time may be restored if warranted by "later conduct and outstanding effort." The more difficult question is whether the loss of good time amounts to an imposition of conditions which are beyond "the terms of confinement ordinarily contemplated by a prison sentence." *Hewitt*, 459 U.S. at 468.

As a general scheme, it is clear that the purpose of the good time provision is to equip prison administrators with a tool for use in maintaining prison discipline and security. Use of this tool may

result in good time credits being deducted and added at various times throughout an inmate's sentence. While the overall effect may be to reduce by one third the actual amount of time served for those inmates who exhibit model behavior throughout the term, we are disinclined to believe that an inmate may reasonably expect to serve only two years when he was sentenced to three years. At best, the inmate has reason to believe that he will be imprisoned for a period of time ending within a particular range, and in any event for no longer than the term for which he was sentenced. Under these circumstances, we do not find that a 30 day loss of good time amounts to an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin*, 115 S. Ct. at 2230. The discretionary use of good time as a behavior management tool is one of the ordinary incidents of life in the Maine prison system.

Conclusion

Accordingly, Plaintiff's Motion for Summary Judgment, dated May 8, 1995, is hereby DENIED. Defendants' Cross-Motion for Summary Judgment is hereby GRANTED.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated at Bangor, Maine on January 26, 1996.