

## Edwards v. Johnson

United States District Court for the Southern District of Alabama, Southern Division

May 22, 1990, Decided

CA No. 87-0454

**Reporter:** 1990 U.S. Dist. LEXIS 7993

BARFIELD EDWARDS, Plaintiff, v. WILLIE E. JOHNSON, et al., Defendants

**Subsequent History:** Adopting Order of June 12, 1990, Reported at [1990 U.S. Dist. LEXIS 7980](#).

**Judges:** [\*1] William E. Cassidy, United States Magistrate.

**Opinion by:** CASSADY

### Opinion

#### RECOMMENDATION OF MAGISTRATE

A motion for summary judgment filed by the defendants on July 5, 1988 (Doc. 22), has been referred to the Magistrate for report and recommendation pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) and Local Rule 26. Upon consideration of the motion with attachments and plaintiff's response with attachments filed August 18, 1988 (Doc. 29), it is the Magistrate's opinion that summary judgment should be granted on behalf of all defendants.

Plaintiff, during the relevant time period, was incarcerated at Holman Prison Unit, Atmore, Alabama, serving a sentence of life without parole. He has instituted an action against six defendants, all employees of the Alabama Department of Corrections.<sup>1</sup> The claims asserted on the Court-provided complaint, as amended, are that:

(1) the defendants conspired to violate his constitutional rights under the *Eighth Amendment to the United States Constitution* by placing him in administrative segregation in a manner which violated past "consent decrees stemming from the *Pugh v. Locke*, 406 F.Supp. 308 ([M.D. Ala.] 1976) litigation";<sup>2</sup> and

(2) he was arbitrarily and capriciously [\*2] placed in administrative segregation for an eight-month period on

information supplied to administration officials by unidentified sources.<sup>3</sup>

He asks for a declaration by this Court that the defendants violated his constitutional rights and in doing so violated certain "consent decrees" entered by the United States District Court for the Middle District of Alabama. Plaintiff seeks sanctions against the defendants for violating [\*3] said "decrees" as well as compensatory and punitive damages for time spent in administrative segregation.

#### FACTS

At approximately 9:05 p.m. on June 19, 1986, two prisoners managed to turn off all the power to Holman Prison Unit, allowing five prisoners to escape. An in-house investigation revealed that during the time there was no electricity, numerous inmates went into the power house yard and participated in an attempt to escape but returned to the facility after shots were fired by the tower officer at inmates who were escaping through the southwest corner of the back fence.

Based on information received from inmate sources, a decision was made to place Edwards in investigative segregation to preserve the security of the institution. Therefore, on June 21, 1986, Edwards was placed in investigative segregation.

Administrative Regulation 433 provides that "[a]n inmate's investigative segregation status must be reviewed within 72 hours, excluding holidays, by the warden or his designee." On June 27, 1986, Edwards received a memorandum from Warden Johnson informing him that his seventy-two hour investigative hold had been extended. (Exhibit G, Attached to Summary Judgment Motion). [\*4] "You will be informed of your status upon completion of your investigation, or within 72 hours (excluding weekends or holidays)." (*Id.*)

At 2:42 p.m. on July 1, 1986, Edwards was notified that on July 7, 1986, a form 85 due process hearing would be

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<sup>1</sup> The defendants are Warden Willie E. Johnson, Holman Unit; Warden J. O. Davis, Fountain Correctional Center; Deputy Warden J. E. Murphv, Holman Unit; and three members of a review board that conducted a custody review hearing (Form 85 hearing), Donna Phillips, Michael Hunt, and Glen Archie.

<sup>2</sup> Specifically, plaintiff claims that an anonymous inmate was placed in a position of control over him.

<sup>3</sup> This claim encompasses numerous alleged due process violations. For example, plaintiff claims that a hearing was not conducted within the required seventy-two (72) hours from receipt of notice.

conducted to determine petitioner's involvement in the June 19, 1986 incident. <sup>4</sup> Administrative Regulation 404 provides that a Form 85 due process hearing is to be held within 72 normal working hours of notice, excluding weekends and holidays. At 3:45 p.m. on July 7, 1986, a hearing board heard evidence for the purpose of determining whether there should be a change in Edwards' classification.

Deputy Warden J. E. Murphy, the presenting officer, testified that following the June 19, 1986 escape, he, Warden Johnson and Captain James E. Carver began an investigation to determine the identity of those inmates involved [\*5] in the escape and subsequent prison disturbances. According to Murphy, each of them used their own inmate sources, all of whom had proven truthful in the past, and reached the conclusion that Edwards entered the power house yard in an attempt to escape but returned to the institution when the tower officer began discharging his weapon. Two inmate witnesses testified that Edwards was playing chess when the power went off. Edwards denied entering the power house yard but admitted going to the first gate outside the jail gate.

The hearing board recommended that Edwards be placed in administrative segregation and have his custody changed to "close" based on "the circumstances surrounding the event" and the known reliability of the sources as attested by J. E. Murphy. Warden J. O. Davis accepted the board's recommendation with respect to placing Edwards in administrative segregation but rejected their recommendation that the inmate's custody classification be changed from medium to close.

The Departmental Segregation Review Board reviewed plaintiff's continued confinement in administrative segregation on July 22, 1986, September 23-24, 1986, and November 18-19, 1986. The Institutional [\*6] Segregation Review Board recommended that plaintiff be released from administrative segregation on January 15, 1987. Administrative Regulation 436 provides for review by the Institutional Segregation Review Board, once weekly, of the status of every inmate who spends over seven continuous days in segregation. Furthermore, the Departmental Segregation Review Board is to review at least every sixty (60) days the status of every inmate confined in segregation. "An inmate will be released from segregation unless review indicates that there is good cause for continued segregation . . ."

## DISCUSSION

Summary judgment is proper "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 a judgment as a matter of law." *FED.R.CIV.P. 56(c)*. The clear language of *Rule 56(c)* "mandates the entry of summary judgment, after adequate time for discovery, and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden [\*7] of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265(1986). A complete failure of proof by the non-movant on an element essential to his case renders all facts immaterial, so the movant is entitled to judgment as a matter of law. *Id.* at 323, 106 S.Ct. at 2553.

The movant has "the initial responsibility of informing the district court of the basis for its motion, and identifying those portions" of the record it believes show that there is no genuine issue of material fact. *Id.* At all times, however, the evidence and all factual inferences therefrom must be viewed in the light most favorable to the non-movant. *Coleman v. Smith*, 828 F.2d 714, 717 (11th Cir. 1987) (citation omitted); see *Bishop v. Wood*, 426 U.S. 341, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976). "The party adverse to the movant for summary judgment cannot rest on his pleadings to present an issue of fact [but must] respond with affidavits, depositions, or otherwise, in order to reflect that there are material facts which must be presented to a jury for resolution." *Coleman, supra*, at 717(quoting *Van T. Junkins & Assoc. v. U.S. Industries, Inc.*, [\*8] 736 F.2d 656, 658 (11th Cir. 1984).

A. *Eighth Amendment*. Petitioner claims that his *Eighth Amendment* right to be free from cruel and unusual punishment was violated when prison officials allowed an anonymous inmate to be placed in authority over him in violation of the consent decree entered in *Pugh v. Locke*, 406 F.Supp. 318 (M.D. Ala. 1976), *aff'd in part sub nom. Newman v. Alabama*, 559 F.2d 283 (5th Cir. 1977), *rev'd in part sub nom. Alabama v. Pugh*, 438 U.S. 781, 98 S.Ct. 3057, 57 L.Ed.2d 1114 (1978).

The *Eighth Amendment*, which applies to the states through the Fourteenth Amendment, prohibits conditions of confinement which involve the unnecessary and wanton infliction of pain, such as those totally without penological justification, or punishments grossly disproportionate to the severity of the crime warranting imprisonment. *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S.Ct. 2392, 2399, 69 L.Ed.2d 59 (1981) (citations omitted). "[A] court considering an *Eighth Amendment* challenge to conditions of confinement must examine the totality of

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<sup>4</sup> According to prison regulations, inmates who remain in administrative segregation must have a due process hearing. *Administrative Regulation 433 III.B.*

circumstances," in order to determine whether the cumulative effect of the conditions subjects inmates to cruel and unusual [\*9] punishment. Id. at 362-63, 101 S.Ct. at 2407 (Brennan, J., concurring).

A prisoner's confinement in administrative segregation in and of itself does not constitute cruel and unusual punishment. Hutto v. Finney, 437 U.S. 678, 686, 98 S.Ct. 2565, 2571, 57 L.Ed.2d 522 (1978), reh'g denied, 439 U.S. 1122, 99 S.Ct. 1035, 54 L.Ed.2d 83 (1979). Plaintiff has not complained that during his confinement in administrative segregation he did not have "adequate food, clothing, and sanitation"; thus, the conditions of his confinement there did not, on their face, violate the Eighth Amendment. Sheley v. Dugger, 833 F.2d 1420, 1429 (11th Cir. 1987).

As of December 3, 1984, the injunctions entered in Pugh v. Locke, and like cases, regarding almost all conditions of confinement in the Alabama prison system, were no longer in effect, the victims of the Eighth Amendment violations having been restored as nearly as possible to the positions they would have occupied had the violations never occurred. The existence of the Prison Implementation Committee was continued for the sole purpose of monitoring Alabama prisons to ensure that conditions of confinement at the state institutions did [\*10] not fall into regression. Therefore, during the time about which Edwards complains, Holman Prison Unit was no longer under the court order but rather, was simply being monitored by the Prison Implementation Committee.

Given the lifting of the injunctions in Pugh v. Locke, and similar cases, this Court finds plaintiff's reliance on the Eighth Amendment lacking.<sup>5</sup> A fair reading of Edwards' amended complaint, with its repeated references to the Fourteenth Amendment, reveals that plaintiff's true claim rests within the confines of the Due Process Clause of the Fourteenth Amendment. The Eighth Amendment triggers no procedural safeguards. Sheley v. Dugger, 824 F.2d 1551, 1564 (11th Cir.) (Edmonson, J., dissenting), vacated on reconsideration, opinion withdrawn, substituted

opinion Sheley v. Dugger, 833 F.2d 1420 (11th Cir. 1987).<sup>6</sup>

[\*11] B. Fourteenth Amendment. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property without due process of law." U.S. Const. Amend. XIV, § 1.

The Supreme Court of the United States has recognized in only a few instances a liberty interest inherent in the Constitution "in favor of a prisoner whose original confinement was lawful." Whitehorn v. Harrelson, 758 F.2d 1416, 1420 (11th Cir. 1985). In Hewitt v. Helms, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983), the Supreme Court held that a prisoner's confinement in administrative segregation does not implicate an interest independently protected by the Due Process Clause, as such confinement "is well within the terms of confinement ordinarily contemplated by a prison sentence." Id. at 468, 103 S.Ct. at 869-70.

Despite there being no interest independently protected by [\*12] the Due Process Clause, it is clear that a state may create a constitutionally protected liberty interest through enactment of statutes or regulatory measures. Id. at 469, 103 S.Ct. at 870. In Hewitt, the Supreme Court held that through various Pennsylvania statutes and regulations, Helms acquired a protected liberty interest in remaining in the general prison population. Id. at 470-71, 103 S.Ct. at 871. Those statutes and regulations used language unmistakably mandatory in character, "requiring that certain procedures 'shall,' 'will,' or 'must' be employed . . . and that administrative segregation will not occur absent specified substantive predicates -- viz, 'the need for control,' or 'the threat of a serious disturbance.'" Id. at 471-72, 103 S.Ct. at 871.

In the instant case, various administrative regulations implemented by the Alabama Department of Corrections, like the statutes in Hewitt, use language unmistakably mandatory in character,<sup>7</sup> requiring that certain procedures "must" be employed, see n.6, supra, and that

<sup>5</sup> Furthermore, the use of inmate informants was not condemned in Pugh v. Locke. Rather, the Court was concerned with prisoners being used as "strikers" to guard other inmates on farm duty, as "cell flunkies" to maintain order and perform tasks for prison staff, as inmate clerks having access to institutional files and mail of other inmates, and as medical aides dispersing some medication "which they may withhold at will." 406 F.Supp. at 325. It was in response to such uses of inmates, and not use of inmates as informants, which led the district court to include as part of its order that "[a]t no time shall prisoners be used to guard other prisoners, nor shall prisoners be placed in positions of authority over other inmates." Id. at 333.

<sup>6</sup> "The prisoner's protections against arbitrary punishment is found in the safeguards he must be accorded when he is transferred from the general population to segregated confinement." Id.

<sup>7</sup> Administrative Regulation 433 contemplates two types of circumstances under which an inmate may be placed in segregation:

(1) The institutional classification committee, the warden or his designee may, in an emergency, place an inmate in administrative segregation whose continued presence in the general population poses a serious threat to property, self, staff or other inmates, or to the security or orderly operation of the institution. (2) An inmate may be placed in an individual cell pending completion of an

administrative segregation will not occur absent specified substantive predicates -- viz., "to ensure the safety of the inmate," or "the [\*13] security of the institution." "[T]he repeated use of mandatory language in connection with requiring specific substantive predicates demands a conclusion that the State has created a protected liberty interest [in remaining in the general prison population]." Hewitt, supra, at 472, 103 S.Ct. at 871.

[\*14] That being the case, the Court must determine whether the process afforded Edwards satisfied the minimum requirements of the Due Process Clause. In reaching this crucial determination, the Court must be mindful that "[t]he requirements imposed by the Clause, are, of course, flexible and variable dependent upon the particular situation being examined." Hewitt, supra, at 472, 103 S.Ct. at 871.

Initially, the Magistrate recognizes that it is undisputed that Edwards was placed in investigative segregation on June 21, 1986. While Administrative Regulation 433 provides that an inmate's investigative segregation status "must be reviewed within 72 hours, excluding holidays, by the warden or his designee," it was not until June 27, 1986, some six days after his more restrictive confinement began, that Edwards was informed that his "72 hour investigative hold" had been extended. On that day, Warden Johnson notified the plaintiff that he would receive further information regarding his status upon completion of the investigation "or within 72 hours (excluding weekends or holidays)."

The lapse of some six days between Edwards' initial confinement in investigative segregation and the review [\*15] of his status by Warden Johnson violates the procedure established in Regulation 433 for the review of the status of inmates placed in investigative segregation. However, "not every violation by a state agency of its own rules rises to the level of a due process infringement." Smith v. Georgia, 684 F.2d 729, 732 n.6 (11th Cir. 1982)

(citations omitted): Given the escape of five prisoners on the night of June 19, 1986, and the investigation into numerous prisoners' alleged attempts to escape, which led to the confinement of twenty-seven (27) inmates in administrative segregation (Exhibits G2 and G3, Attached to Summary Judgment Motion), the undersigned finds that the delay in review of plaintiff's status, by some seventy-two (72) hours, was understandable under the circumstances and certainly did not rise to the level of a due process violation. <sup>8</sup>

[\*16] At 2:42 p.m., on July 1, 1986, Edwards received notice that a due process hearing would be conducted on July 7, 1986, at 3:45 p.m. for the purpose of determining whether there should be a change of his classification. Administrative Regulation 404 provided that the chairperson of the due process hearing board must ensure that a Form 85 hearing is held within seventy-two (72) normal working hours of notice, excluding weekends and holidays. July 1, 1986, fell on a Tuesday. With the exclusion of the weekend, July 5-6, and the July 4th holiday, the due process hearing should have been held on Monday, July 7, 1986 at 2:42 p.m. rather than 3:45 p.m. Thus, the defendants exceeded by one (1) hour and three (3) minutes the time within which Regulation 404 prescribes the hearing is to take place. <sup>9</sup> However, the defendants technical and de minimis violation of their regulation in this regard does not violate the Due Process Clause given the crucial fact that Edwards received a due process hearing.

[\*17] In Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), the Supreme Court identified a panoply of procedural rights to be afforded prisoners in disciplinary proceedings. An inmate charged with a disciplinary violation must be given (1) advance written notice of the charges at least twenty-four (24) hours before the hearing; (2) the opportunity to appear at the hearing, to call witnesses, and to present documentary evidence; and (3) a written statement by the factfinders of

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investigation or a due process hearing. Such investigative segregation may be used only when necessary to ensure the safety of the inmate or the security of the institution. Documentation must be provided as to the reason for segregation. The warden or his designee will ensure that no inmate remains in investigative segregation longer than necessary. An inmate's investigative segregation status must be reviewed within 72 hours, excluding holidays, by the warden or his designee.

That regulation also provides that "[i]nmates who remain in administrative segregation must have a due process hearing."

Administrative Regulation 436 was implemented for the purpose of establishing policies and procedures for formal periodic review of inmates confined in administrative segregation. The status of every inmate who spends over seven continuous days in administrative segregation "will" be reviewed once weekly by the Institutional Segregation Review Board and at least every sixty (60) days by the Departmental Segregation Review Board. "An inmate will be released from segregation unless review indicates that there is good cause for continued segregation . . . ."

<sup>8</sup> The undersigned finds it crucial that the plaintiff did receive some review while in investigative segregation so that he was not left wholly unaware of his status.

<sup>9</sup> The record contains the defendants' acknowledgement of the failure to hold the hearing within 72 hours of notice. (Exhibit B, Attached to Summary Judgment Motion).

the evidence relied upon for their decision, and the reasons for the prison board's actions. Id. at 564-66, 94 S.Ct. at 2979.

The Wolff Court was more concerned that prison officials conduct due process hearings and not that the hearing be conducted within a specified time period. This does not mean that prison officials can delay indefinitely the commencement of a due process hearing. Rather, where, as here, prison officials exceed by one hour and three minutes the time limit prescribed in the regulation for conducting a hearing, there is no procedural due process violation.

The major focus of plaintiff's procedural due process challenge is on the defendants' reliance on information [\*18] received from anonymous inmate sources that he was involved in an escape attempt. Specifically, plaintiff alleges that on June 21, 1986, he was arbitrarily and capriciously placed in administrative segregation and remained there for eight months based upon the word of an "anonymous inmate informant." According to plaintiff, no decision should be based solely on information received from an undisclosed source unless there is corroborating evidence or "the circumstances surrounding the event and the known reliability of the source satisfies the finders of fact that the information is true." (See Plaintiff's Brief in Opposition to Summary Judgment Motion).

The Eleventh Circuit has held that "due process may be satisfied where the witness relaying information provided by a confidential informant testifies before the IDC that he knows the informer, that he used him in the past, and that the informer had first hand knowledge of the incident reported." Kyle v. Hanberry, 677 F.2d 1386, 1390 (11th Cir. 1982). J. E. Murphy's testimony at the hearing establishes that he, Warden Johnson, and Captain Carver received information from their own inmate informants and that all of the informants [\*19] had provided information that had been used in the past. Based on the information received from the informants, Murphy testified that it was determined that Edwards entered the power house yard and attempted to escape but returned to the institution when the tower officer began discharging his shotgun. Implicit in Murphy's testimony is the acknowledgement that he knew some of the informers, had used them in the past, and that the informers had first-hand knowledge of the incident reported. Therefore, due process was satisfied in this regard.

Finally, plaintiff argues that the defendants violated prison regulations requiring review of his status in administrative segregation once weekly by the Institutional Segregation

Review Board. As posed, this issue requires the Court to determine what process is due during the periodic reviews that determine whether the confinement should be continued. The Hewitt decision is instructive here as well.

To determine whether Edwards was denied due process, the Court must weigh "the private interests at stake in a governmental decision, the governmental interests involved, and the value of procedural requirements." 459 U.S. at 473, 103 S.Ct. at [\*20] 872(citing Mathews v. Edlridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976)). Dicta in Hewitt alludes to the process required in the type of situation involved in this case. The Supreme Court cautioned that "administrative segregation may not be used as a pretext for indefinite confinement of an inmate. Prison officials must engage in some sort of periodic review of the confinement of such inmates." Id. at 477 n.9, 103 S.Ct. at 874 n.9. However, in making administrative segregation decisions, prison administrators could rely on "purely subjective evaluations and on predictions of future behavior." Id. at 474, 103 S.Ct. at 872(quoting Connecticut Bd. of Pardons v. Dumschat, 452 U.S. 458, 464, 101 S.Ct. 2460, 2464, 69 L.Ed.2d 158 (1981)).

In the instant case, the undersigned finds that the State had a heightened governmental interest in the internal security of the institution given Edwards' involvement in an escape attempt and the fact that he is serving a sentence of life without the possibility of parole. Edwards' private interest is not correspondingly heightened since his transfer to administrative segregation was merely a temporary move to [\*21] a more restrictive environment, a transfer that might be reasonably anticipated as a condition of confinement. Although this Court can find no basis for plaintiff's assertion that he received a two-year administrative segregation sentence, by his own admission, his confinement under administrative segregation was not of potentially limitless duration.

The procedures utilized by prison authorities to keep Edwards in confinement included review of his administrative segregation status every sixty (60) days by the Departmental Segregation Review Board. Although there is no documentation establishing that the Institutional Review Board reviewed plaintiff's status every week, as required by prison regulations, there is documentation that he was reviewed at least once by that Board.<sup>10</sup> Plaintiff does not allege that he did not receive meaningful review by the Departmental Segregation Review Board.

[\*22] Considering the foregoing, the Magistrate opines that the periodic review of plaintiff's administrative

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<sup>10</sup> On Januarv 15, 1987, the Institutional Segregation Review Board recommended that the plaintiff be transferred from administrative segregation to the general prison population.

segregation status by the Departmental Segregation Review Board, along with the one documented review of the Institutional Segregation Review Board, comports with the requirements of due process. The Constitution does not require any more review than that which was received by plaintiff in the instant case.

#### CONCLUSION

The Magistrate is of the opinion that plaintiff's *Eighth* and Fourteenth Amendment rights were not violated by the

defendants and thus, he is not entitled to any relief prescribed by *42 U.S.C. § 1983*. It is recommended that summary judgment be granted in favor of all defendants, that plaintiff take nothing, and that no costs be taxed.

The attached sheet contains important information regarding objections to this recommendation.

DONE this 22 day of May, 1990.