7-12-2004

Delker v. McCullough

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-2145

DANIEL DELKER,

Appellant

v.

JOHN MCCULLOUGH, in his official capacity as the Superintendent of the State Correctional Institution at Houtzdale; J. F. MAZURKIEWICZ, in his official capacity as a member of the Program Review Committee of the State Correctional Institution at Houtzdale; D. A. KYLER, in his official capacity as a member of the Program Review Committee of the State Correctional Institution at Houtzdale; VARIOUS JOHN DOES, in their official capacity as members of the Program Review Committee of the State Correctional Institution at Houtzdale; THOMAS FULCOMER, in his official capacity as a Regional Deputy Secretary for the Pennsylvania Department of Corrections

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On Appeal From the United States District Court
For the Western District of Pennsylvania
(D.C. Civ. No. 01-cv-00312J)
District Judge: Honorable Joy Flowers Conti

Argued February 12, 2004

Before: SCIRICA, Chief Judge, ROTH and MCKEE, Circuit Judges

(Filed July 12, 2004)

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OPINION

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ROTH, Circuit Judge:

Daniel Delker appeals the District Court's order granting appellees' motion for summary judgment. The procedural history of this case and the details of Delker's claims are well-known to the parties, set forth in the District Court's thorough opinion, and need not be discussed at length. Briefly, Delker alleged that he was confined in administrative

segregation without meaningful review and that this violated his right to due process. Delker has been kept in segregation since December 1973 after killing a Department of Corrections captain. The Magistrate Judge issued a Report and Recommendation and concluded that, while Delker had a liberty interest in being released from administrative segregation, the procedures used to determine whether or not he would be released comported with procedural due process. The District Court adopted the Magistrate Judge's Report and Recommendation and granted the motion for summary judgment. Delker filed a timely notice of appeal and we have jurisdiction under 28 U.S.C. § 1291.

We exercise plenary review over the District Court's order granting appellees' motion for summary judgment. Gallo v. City of Philadelphia, 161 F.3d 217, 221 (3d Cir. 1998). A grant of summary judgment will be affirmed if our review reveals 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). We review the facts in a light most favorable to the party against whom summary judgment was entered. See Coolspring Stone Supply, Inc. v. American States Life Ins. Co., 10 F.3d 144, 146 (3d Cir. 1993).

Appellees conceded in the District Court that Delker's continuing placement in administrative confinement triggers due process protections. Thus, the question is whether Delker received procedural due process in relation to his confinement. In Shoats v. Horn, 213 F.3d 140 (3d Cir. 2000), we examined the case of a prisoner who had been held in administrative confinement for eight years. We held that based on the periodic

reviews of his status, Shoats had received the due process to which he was entitled. We further noted that even if Shoats's confinement was based only on his past crimes, the process would be constitutional. Delker argues that, while he has been given the required periodic reviews, these reviews were "no more than rote exercises" and this denial of meaningful review violates the Fourteenth Amendment.

The District Court did a thorough review of the relevant caselaw and set forth a concise summary of the appellees' deposition testimony. We agree with the District Court that the appellees gave Delker meaningful periodic reviews, and thus procedural due process, and were entitled to summary judgment. However, we note that it would be helpful for judicial review if a brief written rationalization for keeping Delker confined in solitary was made when his status was reviewed, although not necessarily every ninety days.

For the above reasons, as well as those set forth by the District Court, we will affirm the District Court's April 1, 2003, judgment.