IN THE COURT OF APPEALS 08/20/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00544 COA

FREDDIE WILLIAMS

APPELLANT

v.

EDWARD HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY; CHRISTOPHER EPPS, DIRECTOR, OFFENDER SERVICES, MISSISSIPPI STATE PENITENTIARY; AND EARL JACKSON, CASE MANAGER SUPERVISOR OF AREA V, MISSISSIPPI STATE PENITENTIARY

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. EUGENE M. BOGEN

COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

FREDDIE WILLIAMS, *PRO SE*

ATTORNEYS FOR APPELLEES:

JAMES N. NORRIE AND WAYNE SNUGGS

NATURE OF THE CASE: PRISON CLASSIFICATION MATTERS

TRIAL COURT DISPOSITION: DISMISSED FOR LACK OF JURISDICTION

BEFORE FRAISER, C.J., BARBER, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Freddie Williams, an inmate at the Mississippi State Penitentiary, filed a petition in the Circuit Court of Sunflower County seeking to have his prison classification changed back to "general population." Williams alleged that designating and keeping him in custody "C" status was arbitrary and illegal, and asked the court to change this status. After a hearing the court held that it did not have jurisdiction. Williams appealed. Finding no error, we affirm.

FACTS

On May 13, 1993, Williams was placed in close confinement as a result of involvement in money order fraud. He complained about his classification, location of the housing, as well as other matters. He also alleged that classifying him in close confinement was a violation of his constitutional rights, as well as a violation of the department of correction's policies. He states that he has been in close confinement for longer than the period of time allowed for such confinement. Williams asked the court to reclassify him so that he can re-enter the "general population."

Evidence presented at a hearing conducted by the circuit court on April 19, 1995, revealed that the department's classification committee had met periodically to review Williams' classification. The circuit court concluded that it did not have authority to review decisions by the classification committee as long as the department's policies and procedures were in accordance with the law. More specifically, the court said:

> The Court does not have the authority to substitute its judgment for what classification and housing should be assigned for that of the committee.

DISCUSSION

In order for the circuit court to review administrative decisions for which no appeal process is established by statute, a writ of certiorari must be filed under section 11-51-95 of the Mississippi Code. That statute allows review of judgments from inferior tribunals to the circuit court:

> Like proceedings as provided in section 11-51-93 may be had to review the judgments of all tribunals inferior to the circuit court, whether an appeal be provided by law from the judgment sought to be reviewed or not . . . .

Miss. Code Ann. § 11-51-95 (Supp. 1995). Instead of filing a writ of certiorari, Williams filed a *pro se* petition for writ of habeas corpus. The use of habeas corpus after a conviction was abolished by the Mississippi Uniform Post-Conviction Relief Act. *See* Miss. Code Ann. § 93-39-3 (1972). The State argues that because Williams filed a petition for a post-conviction habeas corpus instead of a writ of certiorari, the circuit court was without jurisdiction to decide the matter at hand. However, the supreme court has relaxed pleading rules when a prisoner is proceeding *pro se* "to the end that a prisoner's meritorious complaint may not be lost because inartfully drafted." *Moore v. Ruth*, 556 So. 2d 1059, 1061 (Miss. 1990).

In the final judgment of the circuit court in this matter, the judge dismissed the petition for "writ of habeas corpus" finding that it lacked jurisdiction to hear such matters. This does not appear to be a dismissal based solely on the inartfully drafted petition; for at the April 19, 1995 hearing the judge based his dismissal on additional findings:

> In light of the fact that [Williams is] scheduled for an annual review within the next month, I don't think any further action is required here. More importantly, this Court does not have the authority to review decisions by the classification committee so long as the hearings are conducted in accordance with the D.O.C.'s policies and procedures and in accordance with the law. The court does not have the authority to substitute its judgment for what classification and housing should be assigned for that of the committee.

Construing Williams' petition as a writ of certiorari rather than a writ of habeas corpus, we must first determine if the mandates of the statutory remedy have been met. The statute allows the circuit court to review matters of "tribunals inferior" to the circuit court. Miss. Code Ann. § 11-51-95 (Supp. 1995). The decision being reviewed here is by the classification committee, appointed by the commissioner of the department of corrections under section 47-5-99. The State concedes in its brief that "[p]rison classification committees are certainly 'tribunals inferior' to the circuit court where they 'hear evidence and make decisions' in prison classifications." There is no case law that speaks directly to whether prison classification committees are "tribunals inferior" to the circuit court. In light of the State's concession here, however, we will not address the threshold issue of whether this committee even qualifies as an inferior tribunal.

Since for purposes of this appeal the prison classification committee is a "tribunal inferior," we must next determine if the other statutory requirements for writ of certiorari have been met. The certiorari process is discretionary and there must be a showing of "good cause" why the petition should be granted. *Merritt v. State*, 497 So. 2d 811 (Miss. 1986). Certiorari is designed for the purpose of permitting examination of "questions of law arising or appearing on the face of the record and proceedings." Miss. Code Ann. § 11-51-93 (1972).

The petition filed by Williams requested the court to direct the prison officials to:

> cancel and withdraw the current classification status of the petitioner, to refrain from the arbitrary and illegal continuous confinement of the Petitioner at Unit 32, and to refrain from the continuous confinement of the Petitioner in Unit 32 in violation of his Constitutional rights to Due Process of Law in conditions more burdensome and prejudicial than permitted by law or required by the facts of the case as well as refrain from the continuous confinement of the Petitioner in Unit 32 via outside influence, influence of which interferes with the statutory duties of Offender Services and/or Classifications.

The Mississippi Supreme Court has stated that "[t]he courts will not interfere with prison rules and regulations unless the rules clearly deprive the prisoner of some fundamental constitutional right. The operation of a prison and the enforcement of its rules and regulations are ordinarily within the sound discretion of the prison administrator." *Morgan v. Cook*, 236 So. 2d 749, 750 (Miss. 1970). Williams argues in his brief that his constitutional rights have been violated because he is being subjected to "invidious discrimination and that there are prisoners in the general population who have worse records than his and are greater security risks." The Fifth Circuit Court of Appeals has stated that "[j] udicial interference with prison administration should be avoided whenever possible." *Sullivan v. Ford*, 609 F.2d 197, 198 (5th Cir.), *cert. denied*, 446 U.S. 969 (1980). Furthermore, it is recognized that "prison administrators are best suited to determine the practices and procedures necessary to maintain security;" therefore, "their decisions will be upheld unless they have exaggerated their response to security and discipline considerations so that their actions are unreasonable and arbitrary." *Tubwell v. Griffith*, 742 F.2d 250, 252 (5th Cir. 1984).

In the recent case of *Sandin v. Conner*, 115 S. Ct. 2293 (1995), the United States Supreme Court discusses case law that for several decades gradually expanded the right of prison inmates to complain that certain procedures were not properly followed. Chief Justice Rehnquist for the Court stated that this expansion "has led to the involvement of federal courts in the day-to-day management of prisons. . . ." *Sandin*, 115 S.Ct. at 2299. The Supreme Court in *Sandin* held that prison regulations do not create rights upon which prisoners can sue. The previous error had been the focus on regulatory "language on which to base entitlements to various state-conferred privileges." *Id.* In the present case, Williams alleges just such entitlements. He allegedly has remained in the "close confinement" classification longer than is permitted, although the prison authorities deny that. He mentions other inmates who he claims have been treated differently. The prison authorities respond by pointing out several disciplinary infractions that have placed him in isolation or otherwise caused discipline; one just a few months before the circuit court hearing led to isolation for twenty days because Williams assaulted another inmate. At these disciplinary hearings, Williams' classification has been reviewed.

The powers and duties of classification committees are established by statute. Miss. Code Ann. § 47-5-103 (Supp. 1995). Until the 1995 amendments to the statute, the classification committee was required to review each offender's classification at least once each year. This requirement was changed in 1995, and the review is no longer mandatory. The statute now reads: "The classification of each offender may be reviewed by a classification committee at least once each year." *Id.* Based on the evidence in the record and the testimony presented at the hearing, the classification committee did not violate the statutory requirements. Periodic reviews were held to determine if Williams' classification should be changed. The factors established by prison regulations for determining classification have at least on the face of the records been applied. Williams simply disagreed with the determinations made by the committee. What Williams would have us do is exactly what the *Sandin* Court said a prisoner is not entitled to have done -- have a court comb the prison regulations to determine whether some arguable entitlement exists.

The Supreme Court stated a prisoner could complain about certain kinds of actions:

> We recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause. But these 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 2299-300 (citations omitted). *Sandin* involved the disciplinary segregation of a prisoner. However, the Court held that such confinement, "though concededly punitive, does not present a dramatic departure from the basic conditions of Conner's indeterminate sentence." *Id.* at 2301.

In light of the holding in *Sandin*, the Fifth Circuit Court of Appeals stated: "It is difficult to see that any other deprivations in the prison context, short of those that clearly impinge on the duration of confinement, will henceforth qualify for constitutional "liberty" status. *Orellana v. Kyle*, 65 F.3d 29, 31-32 (5th Cir. 1995), *cert. denied*, 116 S. Ct. 736 (1996). Whether we read *Sandin* quite that broadly or not, it is enough for us to conclude that no issue was raised by Williams for the circuit court and this Court to review.

THE JUDGMENT OF THE SUNFLOWER COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS ASSESSED TO SUNFLOWER COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.