IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00779 COA

DAVID GRAY **APPELLANT**

v.

STEVE WILSON PUCKETT, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS; ANN L. LEE, DIRECTOR OF OFFENDER SERVICES, MISSISSIPPI DEPARTMENT OF CORRECTIONS AND RAYMOND ROBERTS, SUPERINTENDENT, MISSISSIPPI DEPARTMENT OF CORRECTIONS **APPELLEES**

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	06/05/96
TRIAL JUDGE:	HON. GRAY EVANS
COURT FROM WHICH APPEALED:	SUNFLOWER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEYS FOR APPELLEES:	OFFICE OF THE ATTORNEY GENERAL BY: JAMES M. NORRIS JANE LANIER MAPP
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	DENIED CHANGE IN CLASSIFICATION STATUS
DISPOSITION:	AFFIRMED - 2/24/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/7/98

BEFORE THOMAS, P.J., KING, AND PAYNE, JJ.

PER CURIAM:

David Gray, a former death-row inmate, appeals pro se the MDOC's decision to disqualify him for "A" custody. The circuit court dismissed Gray's petition. We affirm.

Gray states that when he appeared before the Classification Committee they showed him a memorandum written by Edward Hargett, which stated that ex-death-row inmates were not to be considered for "A" custody. He opines that the Committee used this as their denial for his "A" classification. He argues that Hargett, who was not a member of the Committee, dictated the rules to the Committee, which by statute, **Miss. Code Ann. § 47-5-103 (Rev. 1993),** the Committee was bound to promulgate. By having used the criteria set forth by the Hargett memorandum and using this as its denial of change in custody, the Committee necessarily adopted the guidelines in the memorandum, even if it did not initially draft the criteria.

Gray contends that Miss. Code Ann. § 47-5-103, which requires "that the committee provide the parole board with a copy of the classification assigned to each offender" will diminish his chance for parole. The parole board, when determining whether an inmate should be considered for parole would have all the inmate's information before them at that time. This argument has no merit.

There is a Supreme Court decision that is germane to Gray's situation. ***Sandin v. Conner,* 515 U.S. 472 (1995).** The Court recognized that under some circumstances states may create liberty interests, but "these interests will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." ***Id.*at 484** (citations omitted). The test articulated in *Sandin* precludes us from finding a liberty interest and bars relief as any hardship experienced by Gray is not "atypical" in relation to the ordinary incidents of prison life. ***Id.* at 486.**

In ***Carson v. Hargett,* 689 So. 2d 753 (Miss. 1996),** the Court stated "the classification of inmates is the responsibility of the Mississippi Department of Corrections. . . [and] *an inmate has no liberty interest in his custody classification.*" ***Id.* at 754** (citation omitted) (emphasis added). "None of the [Mississippi] statutes confers a right to a particular classification." ***Id.* at 755.**

In ***Luken v. Scott,* 71 F.3d 192, 193 (5th Cir. 1995),** the Court addressed an argument where Luken contended that the mere opportunity to earn "good time" constituted a liberty interest sufficient to trigger the protection of the Due Process Clause. Luken claimed that taking away that opportunity violated a liberty interest because the effect was to reduce his opportunity to earn "good time" to reduce his sentence and accelerate his eligibility to earn parole. ***Id.*** The Fifth Circuit held that the loss of the opportunity was a collateral consequence of the plaintiff's status and "such speculative, collateral consequences of prison administrative decisions do not create constitutionally protected liberty interests." ***Id.*** (citations omitted). "Any of a host of administrative . . . decisions . . . might somehow affect the timing of a prisoner's release, but such effects have never been held to confer a constitutionally protected liberty interest upon a prisoner . . . ." ***Id.* at 193-94.**

Gray argues that by not obtaining "A" custody he will be precluded from earning meritorious earned time under **Miss. Code Ann. § 47-5-142 (Rev. 1993)**. Gray's argument would succeed if the awarding of meritorious earned time was mandatory. It is not. The statute provides that subject to the approval of the commissioner an inmate "may be awarded" meritorious earned time. Although Gray

cannot acquire some meritorious earned time, no time is being added to his sentence. Therefore, the loss of the higher classification and the corresponding ability to achieve some meritorious earned time at the same rate as other inmates in higher custody status does not cause an "atypical and significant hardship" in relation to the ordinary incidents of prison life. ***Sandin,* 515 U.S. at 486**. It is clear that Gray has no property or liberty interest in his custodial classification.

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

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.