IN THE SUPREME COURT OF THE STATE OF NEVADA

J. BENJAMIN ODOMS,
Appellant,
vs.
NEVADA DEPARTMENT OF PRISONS; ROBERT BAYER; E.K. MCDANIEL; DWIGHT NEVEN; BILL DONAT; AND J. PLUNKETT,
Respondents.

No. 42901

FILED

SEP 29 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting respondents' motions for partial summary judgment and summary judgment. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Appellant J. Benjamin Odoms and other Ely State Prison inmates' amended complaint sought declaratory, injunctive, and monetary relief, essentially challenging as unconstitutional certain policies and procedures at Ely State Prison. Thereafter, respondents moved for partial summary judgment and then for summary judgment. Odoms and the other inmates also moved for summary judgment. The district court ultimately entered an order granting summary judgment to respondents. Only Odoms has appealed.

06-19952

This court reviews the order granting summary judgment to respondents de novo.[1] Summary judgment was appropriate if the pleadings and other evidence on file, viewed in a light most favorable to Odoms, demonstrate that respondents were entitled to judgment as a matter of law and that no genuine issue of material fact remains in dispute.[2] General allegations supported with conclusory statements fail to create issues of fact.[3]

In the district court and on appeal, Odoms maintains that he has a protected property right in the interest purportedly accrued on his "inmate savings account" and that, under the Fifth Amendment to the United States Constitution, this right was violated when the accrued interest was taken without just compensation.[4] But "interest on the money deposited [in any inmate savings account] does not accrue."[5] Because interest does not accrue, there can be no taking entitling Odoms

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[1]See Wood v. Safeway, Inc., 121 Nev. __, __, 121 P.3d 1026, 1029 (2005).

[2]Id.

[3]Yeager v. Harrah's Club, Inc., 111 Nev. 830, 833, 897 P.2d 1093, 1094-95 (1995).

[4]See U.S. Const. amend. V.

[5]NRS 209.247(5) (1997). This statute has since been amended, and the former statute applies. Nevertheless, the relevant parts of the new statute contain essentially the same language as the former statute. See NRS 209.247(5) (1999).

to just compensation.[6] We therefore conclude that the district court did not err when it determined that respondents were entitled to judgment as a matter of law on Odoms' claim concerning his inmate savings account.

Additionally, we conclude that the district court did not err when it determined that the so-called level system, which designates inmate housing and privileges generally based on inmate conduct and discipline history, did not violate Odoms' equal protection[7] and due process rights.[8] Further, the district court did not err when it determined that

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[6]We note that Odoms' reliance on NRS 209.241(4), and its discussion in Tellis v. Godinez, 5 F.3d 1314 (9th Cir. 1993), Vance v. Barrett, 345 F.3d 1083 (9th Cir. 2003), and McIntyre v. Bayer, 339 F.3d 1097 (9th Cir. 2003), among other cases, is misplaced because those authorities were not discussing inmate savings accounts. NRS 209.247(5), not NRS 209.241(4), applies to inmate savings accounts.

[7]See Barren v. Harrington, 152 F.3d 1193, 1194-95 (9th Cir. 1998) (providing that a viable Equal Protection claim shows that a defendant "acted with an intent or purpose to discriminate" against the plaintiff based on membership in a protected class); see generally Jones v. North Carolina Prisoners' Union, 433 U.S. 119, 136 (1977) (recognizing that the United States Constitution does not require prison officials to treat all inmate groups alike when differentiation will avoid an imminent threat of institutional disruption or violence).

[8]See Sandin v. Conner, 515 U.S. 472, 484 (1995) (recognizing that state prison regulations give rise to a liberty interest protected by the Due Process clause only if those regulations impose "atypical and significant hardship . . . in relation to ordinary incidents of prison life"); see also Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976) (noting that an inmate's security classification and the privileges incident to it do not necessarily

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Odoms' numerous alleged deprivations by Ely State Prison, including purportedly restricting Odoms to one hour per day of exercise, did not violate the Eighth Amendment to the United States Constitution.[9]

Finally, in the district court and on appeal, Odoms baldly maintains that respondents' actions "constituted a conspiracy." Odoms' conclusory statements, however, fail to create an issue of fact, much less assert the elements of a viable conspiracy claim.[10] We thus conclude that

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. . . *continued*
invoke due process protections); Turner v. Safley, 482 U.S. 78, 89-90 (1987) (setting forth the factors relevant to determining the reasonableness of a prison regulation).

[9]See U.S. Const. amend. VIII; Farmer v. Brennan, 511 U.S. 825, 834 (1994) (delineating the two-prong test for determining when a deprivation by prison officials violates the Eighth Amendment: 1) the alleged deprivation must be objectively, sufficiently serious and 2) in allowing the deprivation to take place, the prison officials must have a "sufficiently culpable state of mind"); see also Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982) (recognizing that prison officials' "'obligation under the [E]ighth [A]mendment is at an end if [they] furnish[] sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety'") (quoting Wright v. Rushen, 642 F.2d 1129, 1132-33 (9th Cir. 1981)).

[10]Ivey v. Board of Regents of University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982) (noting the insufficiency of conclusory allegations to support a claim of official participation in civil rights violations); Mosher v. Saafeld, 589 F.2d 438, 441 (9th Cir. 1978).

the district court did not err when it granted summary judgment to respondents on Odoms' conspiracy claim.

Accordingly, we affirm the district court's judgment.[11]

It is so ORDERED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Dan L. Papez, District Judge
J. Benjamin Odoms
Attorney General George Chanos/Carson City
Attorney General George Chanos/Las Vegas
White Pine County Clerk

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[11]Having considered all the issues raised by Odoms, we conclude that his other contentions lack merit and therefore do not warrant reversal of the district court's judgment.