IN THE SUPREME COURT OF THE STATE OF NEVADA

TRAVERS A. GREENE,
Appellant,
vs.
E.K. MCDANIEL, WARDEN, ELY STATE PRISON,
Respondent.

No. 46791

FILED

OCT 18 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 a motion to dismiss. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Appellant Travers A. Greene filed an amended complaint for declaratory and injunctive relief, in which he challenged as unconstitutional his High Risk Potential (HRP) classification and confinement at Ely State Prison. Respondent E.K. McDaniel filed a motion to dismiss for failure to state a claim upon which relief could be granted, which the district court ultimately granted. Greene appeals.

In determining whether Greene sufficiently stated a claim for relief,[1] this court accepts all of his factual allegations as true and

[1]Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

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construes all reasonable inferences in his favor.[2] Dismissal was proper only if Greene's allegations would not entitle him to relief.[3]

On appeal, Greene argues that the district court erred by failing to address his Fifth Amendment claim and by determining that he was not entitled to certain due process protections.[4] In the district court Greene contended that (1) HRP confinement is a form of disciplinary segregation that violates his procedural due process rights, and (2) a prison policy requiring that he admit to the conduct that gave rise to his HRP status in order to be considered for removal from HRP confinement violates his Fifth Amendment privilege against self-incrimination.

Accepting all of Greene's factual allegations as true, his HRP designation and confinement do not violate his constitutional rights. In the prison context, liberty interests protected by the Due Process Clause are limited to freedom from restrictions that are "atypical and significant"

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[2]Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

[3]Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

[4]Although Greene also purports to challenge the district court's interlocutory order denying his motion for a temporary restraining order or for a preliminary injunction, that order was independently appealable under NRAP 3A(b)(2). Indeed, Greene previously challenged that order on appeal. See Greene v. McDaniel, No. 41416 (Order of Affirmance, November 5, 2003). Therefore, he may not challenge that order in the context of this appeal.

Greene also argues on appeal that the district court analyzed his claims under an inappropriate legal standard and erroneously allowed McDaniel to invoke immunity. Our review of the record reveals that these arguments are baseless, and therefore, we decline to further address them.

in relation to the "ordinary incidents of prison life."[5] Here, however, because Greene has not alleged that either his HRP designation or his refusal to participate in certain programs to become eligible for removal from HRP confinement would change the length of his sentence or subject him to any atypical or significant restrictions beyond the ordinary incidents of prison life, his due process argument is unavailing.[6]

Similarly, Greene's HRP status does not violate his constitutional privilege against self-incrimination. In particular, Greene has not alleged that the threat of having to remain in HRP confinement for not admitting to the conduct that led to his HRP classification affects his term of incarceration or his eligibility for release, and thus, does not amount to unconstitutional compulsion.[7]

Accordingly, because we conclude that the district court properly determined that Greene failed to allege any due process or Fifth Amendment violations that would entitle him to declaratory relief and,

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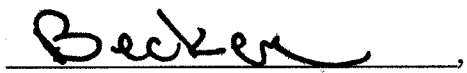
[5]Sandin v. Conner, 515 U.S. 472, 484 (1995).

[6]See 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 invoke due process protections); Meachum v. Fano, 427 U.S. 215, 224-25 (1976) (concluding that a prisoner has no constitutionally protected interest in retaining a specific security classification and avoiding transfer to a maximum security prison with more burdensome conditions); Thomas v. Ramos, 130 F.3d 754, 760 (7th Cir. 1997) (noting that a prisoner has no liberty interest in remaining in general population).

[7]McKune v. Lile, 536 U.S. 24, 37-38 (2002) (Kennedy, J., plurality).

thus, properly dismissed Greene's complaint, we affirm the district court's order.[8]

It is so ORDERED.


, J.
Becker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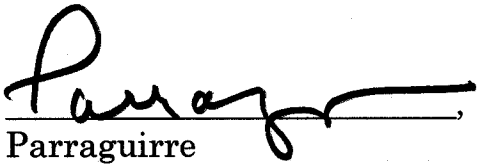
, J.
Parraguirre

cc: Hon. Steve L. Dobrescu, District Judge
Travers A. Greene
Attorney General George Chanos/Las Vegas
White Pine County Clerk

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[8]Id. at 41-44; see also Johnson v. Baker, 108 F.3d 10, 11 (2d Cir. 1997) (concluding that prison officials are "permitted to take adverse administrative action for failure to respond to inquiries, even where the answers might tend to incriminate, so long as the adverse 'consequence is imposed for failure to answer a relevant inquiry'") (quoting Asherman v. Meachum, 957 F.2d 978, 980 (1992)); cf. Searcy v. Simmons, 299 F.3d 1220, 1225 (10th Cir. 2002) (recognizing that McKune mandates dismissal of a Fifth Amendment claim in cases where the consequences of an inmate's refusal to admit to certain conduct merely amount to a reduction in privileges and transfer to a maximum security prison).