

SEP 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD P. FOSTER,

Plaintiff - Appellant,

v.

M. D. MCDONALD, D. J. DAVEY, and
R. ST. ANDRE,

Defendants - Appellees.

No. 07-15744

D.C. No. CV-04-02557-RRB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Ralph R. Beistline, District Judge, Presiding

Argued and Submitted September 14, 2009
San Francisco, California

Before: TROTT and BEA, Circuit Judges, and CONLON,** District Judge.

Ronald P. Foster, a California state prisoner, appeals from the district court's entry of summary judgment in favor of state prison officials M. D. McDonald, D.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Suzanne B. Conlon, United States District Judge for the Northern District of Illinois, sitting by designation.

J. Davey, and R. St. Andre. McDonald reassigned Foster from a single cell to a cell shared with another inmate. Foster refused the order to share a cell for the stated reason that he was not ready to deal with living with another inmate.

Although Foster was not forced to share a cell, he lost his accumulated good-time credits and was placed on zero-credit earning status for his continuing refusal to obey the order to double-cell. Foster's loss of good-time credits directly and significantly affects his release date by at least 390 days. In this 28 U.S.C. § 1983 action, Foster claimed the double-cell order violates the Eighth Amendment because McDonald knew or should have inferred that Foster's safety was at risk if Foster were forced to accept a cellmate. In addition, Foster claimed that Davey and St. Andre deprived him of property without due process by confiscating his electronics equipment without a hearing. Foster sought damages on both claims, as well as an injunction requiring that his single-cell status be reinstated.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Summary judgment rulings are reviewed *de novo*. *Corales v. Bennett*, 567 F.3d 554, 562 (9th Cir. 2009). A grant of summary judgment may be affirmed on any basis supported by the record. *Id.* We affirm.

The district court did not err in concluding that Foster's § 1983 claim is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), and *Edwards v. Balisok*, 520

U.S. 641 (1997). A state prisoner's § 1983 claim is not cognizable if success on the claim would necessarily imply the invalidity of his sentence. *Heck*, 512 U.S. at 486-87. Consequently, a prisoner's § 1983 challenge to disciplinary hearing procedures is barred if judgment in his favor would necessarily imply the invalidity of the resulting loss of good-time credits. *Balisok*, 520 U.S. at 646. A decision in Foster's favor would necessarily imply the invalidity of his loss of good-time credits for refusing to share a cell with another inmate. This consequence would affect directly and significantly his release date. Although Foster disclaims seeking reinstatement of good-time credit in this case, the result is clearly implied from the requested injunction to reinstate his single-cell status. The requested injunctive relief would invalidate the basis for the disciplinary charges and loss of good-time credits.

The district court did not err in declining to adopt the magistrate judge's recommended denial of McDonald's summary judgment. Foster failed to present a genuine issue of material fact that his safety was at risk if double-celled, or that McDonald knew or should have inferred that Foster's safety was threatened if double celled. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (holding that a prison official acts with deliberate indifference when he knows of and disregards an excessive risk to inmate safety). Foster contends he was entitled to continued

single-cell status because twelve prior classification committees between 1999 and 2003 found him eligible. But the California Department of Corrections updated its single-cell policy in April 2003; Foster no longer qualified.

The district court did not err in granting summary judgment for Davey and St. Andre on Foster's property deprivation claim. California law provides an adequate post-deprivation remedy for a prisoner's property loss. *See Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (*per curiam*) (holding that California's post-deprivation remedy for property loss barred a prisoner's § 1983 challenge to property deprivation).

AFFIRMED.