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STATE OF VERMONT
WASHINGTON COUNTY

FILED

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JOSEPH BRUYETTE,
Plaintiff,

v.

STEVEN GOLD, Commissioner of
Department of Corrections,
Defendant.

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Washington Superior Court
Docket No. 429-8-04 Wng SUPERIOR COURT
WASHINGTON COUNTY

DECISION
Cross-Motions for Summary Judgment

Joseph Bruyette is an inmate who seeks the expungement of a conviction for a disciplinary violation resulting from his refusal to obey a prison guard's orders. He claims a right to due process protections and alleges that his rights to several due process protections were violated at the disciplinary hearing.

He alleges deprivation of liberty in the form of the eight days he spent in pre-hearing segregation before the hearing on the disciplinary violation. This was the sole punishment he received for the conviction. There is no dispute that neither the segregation nor the conviction has reduced ERT credits and will not directly affect the length of time he serves under his sentence. It will not have any other collateral consequences other than the fact of the DR conviction.

Under the federal Due Process Clause, inmates who claim a denial of due process prior to restrictive confinement have the burden of demonstrating that they have a right to procedural due process. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Under *Sandin v. O'Connor*, a deprivation of liberty sufficient to trigger procedural due process protections is one that "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Wilkinson*, 545 U.S. at 223 (quoting *Sandin v. O'Connor*, 515 U.S. 472, 484 (1995)). In *Sandin*, thirty days of solitary confinement was insufficient to give rise to a right to procedural protections. *Sandin*, 515 U.S. at 486.

In this case, though he had the burden to do so, Bruyette has made no showing that the eight days of pre-hearing segregation is a sufficient deprivation of liberty to trigger the right to procedural due process protections. There is no factual showing that either the circumstances of confinement or the length of time or the combination of the two constitute "atypical and significant hardship" in relation to ordinary prison life. Thus, he has simply not met the burden to show entitlement to the procedural rights he claims were violated.

While the complaint raised other issues concerning the sufficiency of the process that took place in connection with the DR hearing, those claims cannot be considered unless plaintiff shows either a deprivation of liberty, which has not occurred as described above, or an alternate basis for entitlement to the procedural protections he alleges were violated. Plaintiff has not set forth facts or argument establishing alternate grounds on which he relies. Therefore, there is not a basis for reviewing the other claims he raises in this Rule 75 proceeding.

For the foregoing reasons,

1. Defendant's motion for summary judgment is *granted*; and
2. Plaintiff's motion for summary judgment is *denied*.

Dated at Montpelier, Vermont this 21st day of March 2007.

Mary Mills Teachout
Mary Mills Teachout
Superior Court Judge