



LGIT'S COMMANDER'S LOG
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The United States Constitution creates no entitlement to grievance procedures or access to any such procedure voluntarily established by a state.

QUESTION: Do inmates have a constitutionally protected right to administrative remedies, including grievance procedures?

ANSWER: No. Access to administrative remedies is not itself a constitutionally protected right. Therefore, the existence of a prison grievance procedure does not confer any substantive right upon inmates.

CASE: *Leamon Tatum v. Bobby Shearin, et al.*,
United States District Court for the District of Maryland
Decided February 18, 2010 (unpublished)

In this case, Leamon Tatum (“Tatum”), then an inmate at the Maryland Correctional Institution in Hagerstown, sued for damages resulting from occurrences while he was incarcerated at the Western Correctional Institution in October, 2007. Tatum alleged that he notified Correctional Officers Hamilton and Dayton that cell mate Eugene Frye (“Frye”) had made threats against his life, and that his plea for help was ignored. Tatum claimed that Frye assaulted him leaving him with permanent injuries and that he received medical care as result of the assault. The defendants moved to dismiss the complaint or for summary judgment. In support of their motion, the officers submitted affidavits in which they denied that Tatum had informed them that he had been threatened by his cell mate. They further stated that if Tatum had done so, they would have reported the matter to the control center sergeant, who would have taken steps to investigate the allegation and separate the men if needed. Officer Dayton said that *after* the assault, Tatum approached her on the housing unit tier and told her that Frye had assaulted him while he was asleep, hitting him in the face, and biting him on the finger. The officer observed that one of Tatum’s eyes was bruised and swollen and a finger was bleeding. Because Officer Dayton did not know which inmate actually started the altercation, she wrote a notice of infraction on both for fighting. An administrative hearing officer subsequently found that Frye was the aggressor and found Tatum not guilty of the rule infraction. After the incident, Tatum filed, and later re-filed, a grievance asserting a failure to protect claim.

In his lawsuit, Tatum also took issue with the administrative remedy (grievance) process relating to the procedural dismissal of his grievances. He claimed that the warden refused to respond to his original or re-filed grievances based upon the alleged failure-to-protect, requiring Tatum to appeal the non-response to the Commissioner, Inmate Grievance Office (“IGO”) and the circuit court. He further alleged that the warden eventually responded to his grievance over eight months after it was originally filed. Because of this conduct, Tatum

complained that state correctional employees failed to observe agency regulations and procedures and in particular Division of Correction Directive 185-002, which relates to the grievance process.

The court determined that Tatum's complaint did not set out a failure-to-protect claim under the Eighth Amendment and also raised a due process claim under the Fourteenth Amendment with respect to the grievance process. As to the failure-to-protect claim, the court determined that the actions or inactions of the officers were plainly in dispute. However, since Tatum had failed to challenge the officers' affidavits with an affidavit of his own, the court granted the officers' motion for summary judgment. As to the due process claim related to the grievance procedure, the court first observed that "[t]he Constitution creates no entitlement to grievance procedures or access to any such procedure voluntarily established by a state." Therefore, in the federal circuit encompassing Maryland, the grievance procedure established for Division of Correction inmates, or for prisoners incarcerated elsewhere in the State, does not implicate a Fourteenth Amendment due process right. Further, Tatum's Complaint failed to allege that any deficiencies and improper acts associated with the grievance process caused him injury by denying him access to courts, for example, impeding his ability to file federal or state lawsuits. For these reasons, this aspect of Tatum's suit also failed.

NOTE: Simply stated, inmates have no liberty interest in access to a grievance process. Rather, it is the underlying right to be vindicated through the grievance procedure which provides the essential test in § 1983 cases. In other words, when the claim underlying the administrative grievance involves a constitutional right, such as the right to be free from cruel and unusual punishment, the prisoner's right to petition the government for redress is the right of access to the courts, which is not compromised by the prison's refusal to entertain his grievance. Therefore, as an independent or "stand alone" cause, an inmate's suit based upon the handling of his grievances fails and should be dismissed in its entirety.

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