

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN CARLOS DUARTE,

1:03-cv-05488-SMS-P

Plaintiff,

vs.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

S. DUFFLE, et al.,

TRIAL: November 6, 2007

Defendants.

This matter came on regularly for a jury trial on November 6, 2007. Upon the calling of the case and on the record, the parties stipulated to a trial before the Court without a jury. The parties have consented to the exercise of Magistrate Judge jurisdiction pursuant to 28 U.S.S. § 636(c). Plaintiff is a federal prisoner proceeding pro se in this civil rights action pursuant to Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). Plaintiff is representing himself. Defendants Shawn Duffle and Georgina Puentes are represented by Attorney Michael Charles Kellar from the law firm of Robinson and Kellar.

This action is proceeding on Plaintiff's amended complaint, filed January 8, 2004, against Defendants Puentes and Duffle on

1 Plaintiff's equal protection claim.¹ Various court orders have
2 been issued during the pendency of this action that have narrowed
3 the remaining legal issues for trial to the following: Whether
4 Defendants Puentes and Duffle ("Defendants") violated Plaintiff's
5 equal protection rights by treating Plaintiff differently from
6 another inmate when both committed rules violations.

7 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8 Upon presentation of evidence, considering the testimony of
9 all witnesses, the exhibits received into evidence, the
10 statements and arguments of counsel, the Court enters the
11 following findings of fact and conclusions of law. In making a
12 finding of fact, the Court intends to rely on all evidence in the
13 record that is consistent with or supports the Court's finding.
14 If the Court has mistakenly categorized a finding as factual or
15 legal, the Court intends that the substance of the finding, and
16 not its label, predominate. To the extent that any finding of
17 fact may be interpreted or construed as a conclusion of law, or
18 any conclusion of law may be interpreted or construed as a
19 finding of fact, it is the Court's intention that such
20 construction or interpretation be adopted.

21 **FINDINGS OF FACT**

22 1. Plaintiff John Carlos Duarte is currently a federal
23 prisoner in the custody of the U.S. Bureau of Prisons. The
24 events at issue in this lawsuit occurred while Plaintiff was
25 housed at the Federal Correctional Institution at Taft,
26 California, in December of 2002 and January of 2003.

27
28 ¹ Defendant Gardner was dismissed on September 29, 2005, based on plaintiff's failure to furnish
information sufficient to serve defendant with process. Fed. R. Civ. P. 4(m). (Docs. 32, 35.)

1 2. Defendant Shawn Duffle is currently a Correctional
2 Sergeant at FCI Taft. In December of 2002, she was a Special
3 Investigative Supervisor at FCI Taft. In December of 2002,
4 Defendant Duffle was responsible for investigating incidents of
5 staff and inmate misconduct.

6 3. Defendant Georgina Puentes is currently an Associate
7 Warden at FCI Taft. In December of 2002, she was the
8 Disciplinary Hearing Officer for the hearing at issue in this
9 lawsuit.

10 4. On December 6, 2002, Plaintiff, while in the visiting
11 room, gave several picture frames to inmate McCullough's
12 girlfriend, Anna Fedrau. In exchange, she agreed to pay
13 Plaintiff \$50.00 by placing the money in Plaintiff's inmate trust
14 account.

15 5. Inmate McCullough was authorized to bring the picture
16 frames into the visiting area.

17 6. Pursuant to prison rules, inmate McCullough could
18 receive money deposited into his account from his girlfriend,
19 Anna Fedrau; Plaintiff could not.

20 7. Defendant Duffle was investigating an improper money
21 transaction based on information that staff had seen a suspicious
22 money order come into Plaintiff's account.

23 8. Despite the fact that the offending money order in
24 question indicates it is issued from Brian McCullough (See
25 Defendant's trial exhibit C), Sergeant Duffle testified it is
26 highly unlikely McCullough had an opportunity from inside the
27 prison to purchase a money order.

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1 9. On December 20, 2002, Plaintiff was charged with a
2 violation of prison regulations. Specifically, Plaintiff was
3 originally charged with Taft Correctional Institution Prohibited
4 Acts and Disciplinary Severity Scale Code § 217, which prohibits
5 giving money to, or receiving money from, any person for purposes
6 of introducing contraband or for any other illegal or prohibited
7 purposes.

8 10. Inmate McCullough was not charged with any offense as
9 he did not receive any money from an improper source.

10 11. Plaintiff is a Hispanic male.

11 12. Inmate McCullough is a Caucasian male.

12 13. Defendant Puentes is a Hispanic female.

13 14. Plaintiff appeared at a disciplinary hearing in January
14 of 2003.

15 15. The focus of Defendant Duffle's investigation was the
16 receipt of money from a source outside the prison without
17 authorization: "In this investigation, I was pursuing the money
18 exchange." Inmate McCullough had permission to hand the picture
19 frames to his girlfriend, and there was no evidence McCullough
20 received any money from an improper source.

21 16. The Disciplinary Hearing Officer, Defendant Puentes,
22 found that a \$50.00 money order had issued from Anna Fedrau and
23 had been credited to Plaintiff's inmate trust account.

24 17. Plaintiff admitted to receiving \$50.00 into his account
25 for making picture frames.

26 18. At the disciplinary hearing, Defendant Puentes found
27 that there was not enough evidence to sustain a charge against
28 Plaintiff of violation of Code § 217.

1 19. Defendant Puentes did find that Plaintiff committed the
2 Taft Prohibited Correctional Act of giving money or anything of
3 value to, or accepting money or anything of value from, another
4 inmate or any other person without staff authorization, in
5 violation of offense Code § 328.

6 20. The finding was based upon the following: Plaintiff's
7 statement; a review of Plaintiff's individual account report
8 indicating that he received a \$50.00 postal money order in
9 December of 2002; a copy of the postal money order from an
10 outside source into Plaintiff's account.

11 21. Plaintiff was assessed the following sanctions: 10 days
12 in disciplinary segregation, credit for time served; 3 months
13 loss of social visitation privileges; and, 3 months loss of
14 commissary privileges.

15 CONCLUSIONS OF LAW

16 The Equal Protection Clause requires that persons who are
17 similarly situated be treated alike. City of Cleburne v.
18 Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). An
19 equal protection claim may be established in two ways. First, a
20 plaintiff generally establishes an equal protection claim by
21 showing that a defendant has intentionally discriminated on the
22 basis of the plaintiff's membership in a protected class. See,
23 e.g., Lee v. City of Los Angeles, 250 F.3d 668, 686 (9 Cir.2001)
24 (citing Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir.1998),
25 cert. denied, 525 U.S. 1154 (1999)). The first step in this
26 equal protection analysis is to identify the asserted
27 classification or groups. Thornton v. City of St. Helens, 425
28 F.3d 1158, 1166-67 (9th Cir. 2005); Freeman v. City of Santa Ana,

1 68 F.3d 1180, 1187 (9th Cir. 1995). The groups must be comprised
2 of similarly situated persons so that the factor motivating the
3 alleged discrimination can be identification in the group.
4 Freeman, 68 F.3d at 1187. "An equal protection claim will
5 not lie by 'conflating all persons not injured into a preferred
6 class receiving better treatment' than the plaintiff." Thornton,
7 425 F.3d at 1167 (*quoting* Joyce v. Mavromatis, 783 F.2d 56, 57
8 (9th Cir. 1986)). Under this theory of equal protection, the
9 plaintiff must show that the defendants' actions were a result of
10 the plaintiff's membership in a suspect class, such as race.
11 Thornton, 425 F.3d at 1167. "Mere indifference to the effects of
12 a decision on a particular class does not give rise to an equal
13 protection claim" Thornton, 425 F.3d at 1167; Nabozny v.
14 Podlesny, 92 F.3d 446, 454 (7th Cir.1996).

15 If the governmental action in question does not involve a
16 suspect classification, a plaintiff establishes an equal
17 protection claim by showing similarly situated individuals are
18 treated differently without a rational relationship to a
19 legitimate state purpose. See San Antonio School District v.
20 Rodriguez, 411 U.S. 1 (1972); Squaw Valley Development Co. v.
21 Goldberg, 375 F.3d 936, 944 (9th Cir.2004) (*quoting* Village of
22 Willowbrook v. Olech, 528 U.S. 562, 564 (2000)). Without more,
23 the selective enforcement of valid laws is not sufficient to
24 establish that a defendant's conduct is irrational. Freeman v.
25 City of Santa Ana, 68 F.3d 1180, 1188 (9th Cir.1995) (*citing*
26 Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978); United States
27 v. Kidder, 869 F.2d 1328, 1335 (9th Cir.1989)). If an equal
28 protection claim is based upon selective enforcement of a valid

1 law, a plaintiff must show that others who are similarly situated
2 have not been prosecuted, and that the prosecution is based upon
3 an "impermissible motive." Freeman, 68 F.3d at 1187.

4 1. Defendants Puentes and Duffle were acting pursuant to
5 federal law and in an official capacity in December of 2002 and
6 January of 2003.

7 2. The Court finds that the decision on December 20, 2002,
8 to charge Plaintiff with a disciplinary violation was based upon
9 his conduct in receiving something of value in exchange for
10 making picture frames.

11 3. The Court finds credible Defendant Puentes's testimony
12 that she found Plaintiff guilty of a violation of § 328 based
13 upon Plaintiff's admission that he made picture frames for inmate
14 McCullough's girlfriend in exchange for something of value.

15 4. Plaintiff is of Hispanic origin and inmate McCullough
16 is White.

17 5. There was no basis on which to charge inmate McCullough
18 with a disciplinary violation related to receiving money from an
19 outside source.

20 6. The decision not to charge inmate McCullough with a
21 disciplinary violation was based upon the opinion that inmate
22 McCullough was not directly involved with Plaintiff's receiving
23 money from an outside source. While McCullough may have
24 "brokered" the deal, he received nothing of value for having done
25 so.

26 7. The Court finds that a rational basis exists for the
27 difference in treatment between inmate McCullough and Plaintiff.

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8. The Court finds that Defendants did not engage in selective enforcement of prison regulations.

9. The Court finds that there is no evidence to support Plaintiff's claim that the decision to charge him with and find him guilty of a prison disciplinary violation was based upon his ethnicity.

10. Plaintiff did not establish that he was the victim of discrimination on the basis of his ethnicity in violation of the Fifth Amendment to the U.S. Constitution. Consejo De Desarrollo Economico De Mexicali, A.C. v. United States, 482 F.3d 1157, 1170 n. 4 (9th Cir. 2007) (citing to Bolling v. Sharpe, 347 U.S. 497 (1954)).

JUDGMENT

Judgment is hereby rendered for the Defendants.
IT IS SO ORDERED.

Dated: March 28, 2008

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE