UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10591
Summary Calendar

JOHNNY DWAYNE STATEN,

Plaintiff-Appellant,

VERSUS

DAVID W. WILLIAMS, Sheriff,
Tarrant County, TX, ET AL.,

Defendants,

DAVID W. WILLIAMS, Sheriff
Tarrant County, TX, ET AL.,

Defendants-Appellees.

Appeals from the United States District Court
for the Northern District of Texas
(4:94-CV-338-A)

(August 29, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Johnny Dwayne Staten, a pretrial detainee, appeals, *pro se* and *in forma pauperis*, the dismissal for failure to state a claim of his § 1983 action against several defendants, and the denial of an injunction to protect him from physical abuse by several

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[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

defendants, including those dismissed, and to stay pending state proceedings. We **AFFIRM**.

I.

Staten, confined in Tarrant County Jail at Fort Worth, Texas, brought this action against Sheriff David Williams; hospital director May Pasquet; Doctors David Edgeworth and Ann Tuberville; attorneys Robert McCrarey and Gary L. Medlin; prison guards Feaster, Gall, Harrison, Romero, and Montgomery; an unnamed mail room officer; and Tarrant County. He alleged that he was

> [b]eat robbed injured denied adaquate [sic] medical attention. Legal material removed with threat of punishment. Denied access to the courts. Denied pschycotropic [sic] medication. Complete indifference to serious medical needs. Mail censored opened returned "under color of law." Subjected to threat of serious bodily injury and harm as a result of actions of the guards. The law has refused to investigate forgery of official documents compliant [sic] forms and arrest warrant affadavits [sic]. Denied right to represent myself 78 days. (I am a pro se defendant) denied evidence in possession of attorney crutial [sic] to criminal defense. Attorney contriving with state officials to violate constitutional right of due process. Application for habeas corpus ignored. Application for habeas corpus for bond ignored. Placed on matress [sic] on floor as pre-trial detainee. Denied access to courts. Improperly classified. Placed in a jail with physical deterioration so bad it constitutes cruel and unusual punishment.

Staten sought a stay of all pending state proceedings; release from custody; a "bar to prosecution"; and damages of $1 million from each of two defendants, $20,000 from another, $50,000 each from five others, and $5 million from Tarrant County.

The district court ordered Staten to amend his complaint to allege specific facts as to each claim against each defendant, and

to allege facts showing that the defendants would not be entitled to qualified immunity. It also dismissed with prejudice the claims against the unnamed mail officer.

Staten amended his complaint, enlarging his claims, and naming Chief Swanson, the mail room officer, as an additional defendant. Staten requested that counsel be appointed or, alternatively, that he be granted "latitude" in preparing his case. He sought injunctive relief against the defendants to prevent them from harming him; to stay all pending criminal proceedings; and an order that the State post a reasonable bond.

The district court concluded that Staten's claims against Williams, Pasquet, Edgeworth, Tuberville, and McCrarey should be dismissed for failure to state a claim.[2] Finding "no just reason for delay", the court directed entry of a final judgment, dismissing Staten's claims against those defendants.[3] Fed. R. Civ. P. 54(b) (allowing immediate appeal, on direction of district

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[2] The district court also concluded that Staten failed to state any claim against Swanson (the mail officer) upon which relief could be granted. But, as discussed *infra*, the court did not dismiss the claim against Swanson, and a summons was issued for him.

[3] The district court allowed Staten to proceed on claims against: (1) Officers Feaster and Montgomery (for censoring and interfering with Staten's legal mail); (2) attorney Gary Medlin (whom Staten alleges conspired with prosecutors to deprive him of his civil rights); (3) Officers Romero, Gall and Harrison (Staten alleges they caused him to be threatened and to lose sleep because they labelled him as an informant); and (4) Tarrant County (for interference with his legal mail, denial of medical care, and for establishing policies that allowed the events described in the complaint). As noted, the court also allowed a summons to issue for Swanson.

court, from judgment adjudicating fewer than all claims against all parties).

The district court also denied the requested injunctive relief, stating that "no basis is alleged [in the complaint] for any of the relief sought." And, with regard to a stay of pending state proceedings, the district court stated:

> It is well-settled that federal courts do not intervene in state court prosecutions except in extraordinary circumstances where the danger of irreparable loss is both great and immediate. Moreover, a plaintiff must allege facts that, if true, would authorize an injunction under 28 U.S.C. § 2283. In the instant case, plaintiff has failed to allege facts that, if established, would authorize this court to intervene in the state court proceeding.

(Citations omitted.) Staten appeals the dismissal of his claims against Pasquet, Edgeworth, Tuberville, and Williams,[4] and the denial of injunctive relief.[5]

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[4] As noted, the district court also dismissed Staten's claims against McCrarey; Staten does not appeal from that dismissal.

[5] In his amended complaint, Staten also asserted that he was arrested in Tucson, Arizona on a missing persons warrant; he was extradited to Texas because of charges pending against him there. On appeal, he asserts that the State's attorney violated his rights to represent himself and to a speedy trial. Staten provides no facts in support of these allegations; further, it is unclear what relief he seeks for these violations. Even if intervention in the state proceedings against Staten were proper (and, as discussed *infra*, it is not), Staten has not alleged that any individual defendant involved in this appeal had anything to do with these alleged violations. In any case, as discussed, the district court correctly declined to intervene in the state proceedings.

II.

We review *de novo* the dismissal for failure to state a claim.[6] *See, e.g.*, ***Jackson v. City of Beaumont Police Dep't***, 958 F.2d 616, 618 (5th Cir. 1992) (standard for dismissal under Fed. R. Civ. P. 12(b)(6) (failure to state claim)). We accept as true all the allegations of the complaint, considering them in the light most favorable to Staten. ***Id.***; ***Ashe v. Corley***, 992 F.2d 540, 544 (5th Cir. 1993). Furthermore, "*[p]ro se* prisoner complaints must be read in a liberal fashion and should not be dismissed unless it appears beyond all doubt that the prisoner could prove no set of facts under which he would be entitled to relief." *E.g.*, ***Jackson v. Cain***, 864 F.2d 1235, 1241 (5th Cir. 1989) (citing cases).

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[6] There was no motion under Fed. R. Civ. P. 12(b)(6) to dismiss for failure to state a claim; the district court acted *sua sponte*, using the language ("failure to state a claim") of Rule 12(b)(6). Neither Staten nor the defendants challenges the *sua sponte* dismissal. We need "not address the question whether *sua sponte* dismissal with prejudice requires any notice, for even if that were the rule, the dismissal in the instant case would be harmless error." ***Fernandez-Montes v. Allied Pilots Ass'n***, 987 F.2d 278, 287 (5th Cir. 1993) (*sua sponte* dismissal where only motion to dismiss was in response to original complaint, which was superseded by amended complaint; no motion to dismiss was made in response to amended complaint). Similarly, here, any error was harmless; Staten had notice that his claims might be dismissed for failure to state a claim if he did not provide additional facts in support. Further, he availed himself of the opportunity to amend his complaint. *See also* ***Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit***, 954 F.2d 1054, 1058 & n.5 (5th Cir. 1992) (approving dismissal of claims for failure to satisfy heightened pleading standard, under harmless error analysis, where "[p]laintiffs did know that the court was evaluating the adequacy of their complaint", and citing ***Powell v. United States***, 849 F.2d 157, 1580-82 (5th Cir. 1988) (applying harmless error test to the notice requirement under Fed. R. Civ. P. 56 (summary judgment)), *rev'd on other grounds*, ___ U.S. ___, 113 S. Ct. 1160 (1993), *appeal after remand*, No. 93-1742 (5th Cir. argued May 4, 1994).

Because Staten was a pre-trial detainee, his rights are safeguarded by the Fourteenth Amendment's due process provisions, rather than by the Eighth Amendment's prohibition against cruel and unusual punishment. ***Morrow v. Harwell***, 768 F.2d 619, 625-26 (5th Cir. 1985). The proper inquiry "is whether conditions accompanying pretrial detention [were] imposed upon [Staten] for the purpose of punishment, as the due process clause does not permit punishment prior to an adjudication of guilt." ***Cupit v. Jones***, 835 F.2d 82, 85 (5th Cir. 1987) (quoting ***Bell v. Wolfish***, 441 U.S. 520, 539 (1979)). If an adverse condition of confinement is not reasonably related to a legitimate governmental goal (if it is arbitrary or purposeless), a court may infer that the condition is punitive. ***Id.***

A.

Even considering Staten's amended complaint liberally, in the light most favorable to him, we find no error in the dismissal of the claims against the listed defendants.

Staten claims that he was denied adequate medical care, in that Pasquet refused to acknowledge his injuries or disease; Tuberville caused him to undergo withdrawal "cold turkey" from a medically prescribed drug; and Edgeworth did not perform adequate testing. Staten's amended complaint does not contain facts in support of these allegations. Moreover, the issues with regard to Tuberville's treatment and Edgeworth's failure to perform adequate testing were not before the district court. Staten did not present these issues, which raise factual questions, to the district court;

and, ordinarily, we will not review issues presented for the first time on appeal. "[I]ssues raised for the first time on appeal `are not reviewable by this court unless they involve *purely legal* questions and failure to consider them would result in manifest injustice.'" ***Varnado v. Lynaugh***, 920 F.2d 320, 321 (5th Cir. 1991) (emphasis added).[7]

B.

Staten alleges that Sheriff Williams knew that Staten was in danger, but was deliberately indifferent to the harm inflicted on him. In his amended complaint, Staten added that Williams' policies and failure to supervise jail employees led to his confinement under sub-standard conditions. Further, he asserted that Williams, in his official capacity, caused his legal materials and evidence to be censored and revealed to informants and state agents.

The district court held that these claims against Williams were in his official capacity, and that they therefore were

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[7] As noted, the district court originally dismissed Staten's claims against the "unnamed mail officer". In his amended complaint, Staten identified the mail officer as Swanson; the district court concluded that Staten's allegations against Swanson (interference with his legal mail) also did not state a claim upon which relief could be granted. Perhaps through oversight, however, the district court did not dismiss the claims against Swanson when it dismissed those against other defendants. It does not appear, from our review of the record, that Swanson has been dismissed, except for the earlier dismissal of the "unnamed mail officer." Indeed, a summons apparently issued for him. (Although Staten's notice of appeal names Swanson as one of the parties who was dismissed, Swanson is also identified in it as "unnamed mail officer".) Accordingly, we consider Staten's claims against Swanson still to be pending in district court, and not to be part of this appeal. As discussed *infra*, however, we affirm the denial of injunctive relief as to Swanson.

subsumed in Staten's claim against Tarrant County (not dismissed). Staten contends, however, that it was error to dismiss the claims against Williams.

Needless to say, supervisory officials are not liable pursuant to § 1983 under any theory of vicarious liability for the actions of subordinates. *E.g.*, ***Thompkins v. Belt***, 828 F.2d 298, 303 (5th Cir. 1987) (citations omitted). On the other hand, first, a supervisor may be liable if the plaintiff shows that the supervisor was personally involved in the alleged constitutional deprivation, or demonstrates a "sufficient causal connection" between the violation and the supervisor's wrongful conduct. ***Id.*** at 304; ***Thompson v. Steele***, 709 F.2d 381, 382 (5th Cir.), *cert. denied*, 464 U.S. 897 (1983) (personal involvement is an essential element of § 1983 action). Staten did not state facts showing that Williams was personally involved in failing to protect him, or in interfering with his mail.

Second, Williams would be liable under § 1983 if he had implemented a policy so deficient that it was a "repudiation of constitutional rights" and the "moving force of the constitutional violation." ***Thompkins***, 828 F.2d at 304 (internal quotation marks and citations omitted). As for Staten's allegations regarding Williams' policies, the district court held correctly that they were more properly asserted against Tarrant County, which was not dismissed. Thus, Staten will have an opportunity to establish whether Williams, as Tarrant County's policy-maker, had a policy in

place to violate Staten's civil rights. *See* ***Colle v. Brazos County, Texas***, 981 F.2d 237, 244 (5th Cir. 1993).

C.

Finally, Staten contests the denial of injunctive relief against Swanson, Williams, Tuberville, Edgeworth, and Pasquet, and against the State to stay all proceedings pending against Staten.[8] "The law is well-settled that the grant or denial of injunctive relief rests in the sound discretion of the trial court." *E.g.*, ***Hay v. Waldron***, 834 F.2d 481, 484 (5th Cir. 1987) (summary calendar).

With regard to the requested injunction against Swanson, Williams, Tuberville, Edgeworth, and Pasquet, Staten appears to be requesting a preliminary injunction to prevent them from continuing in the behavior that, he alleges, continues to violate his civil rights. Because Staten's claims against Williams, Tuberville, Edgeworth, and Pasquet were properly dismissed, the district court did not err in denying the injunctive relief. *See*, *e.g.*, ***Hay***, 834 F.2d at 484-85 (listing prerequisites that plaintiff must show in order to obtain preliminary injunction, including "substantial likelihood of success on the merits"). And, because the district court concluded that Staten had not alleged facts that would entitle him to relief against Swanson, the same reasoning supports the denial of injunctive relief as to Swanson.

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[8] Staten also requests an injunction against Officer Gall, who, Staten alleges, paid another inmate $20 to beat him. This issue raises fact questions not presented to the district court. Accordingly, we do not review it. ***Varnado***, 920 F.2d at 321.

With regard to staying the state proceedings, the district court stated correctly that Staten's burden was, *inter alia*, to "allege facts that, if true, would authorize an injunction under 28 U.S.C. § 2283 [Anti-Injunction Act]." As the district court held, "[i]n the instant case, plaintiff has failed to allege facts that, if established, would authorize this court to intervene in the state court proceeding." *See* ***Younger v. Harris***, 401 U.S. 37, 43 (1970) (in order for federal court to intervene in pending state proceeding, movant must show immediate danger of irreparable damages).[9]

III.

For the foregoing reasons, the rulings in issue are

AFFIRMED.

[9] Staten also contends that the district court erred by refusing to allow him to supplement his amended complaint before dismissing his claims. His argument is frivolous. As discussed, Staten initially was ordered to plead specific facts, and was on notice that a failure to do so could result in dismissal. Indeed, despite this claimed error, Staten neither alleges that he sought to amend his complaint in district court; nor provides specific additional facts he would offer if given the opportunity to amend his complaint.