

November 27, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10024
Summary Calendar

JAVIER SAUCEDA,

Plaintiff-Appellant,

versus

JANAY B. WILLIAMS; LARRY HELLUMS; DAVID SCOTT; CARY COOK;
KELLI WARD; WILLIAM BARDIN,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:05-CV-202

Before DAVIS, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Javier Saucedo, Texas prisoner # 839353, proceeding pro se and in forma pauperis (IFP), appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim. Saucedo raised claims concerning the confiscation of a pair of Nike tennis shoes and the resulting disciplinary proceeding.

A dismissal under § 1915(e)(2)(B) as frivolous is reviewed for abuse of discretion, while a dismissal for failure to state a

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

claim is reviewed de novo. Harper v. Showers, 174 F.3d 716, 718 & n.3 (5th Cir. 1999). Although Saucedo may be permitted to assert his claims in a § 1983 action, see Allen v. Thomas, 388 F.3d 147, 148-49 (5th Cir. 2004), Saucedo has not shown that the district court erred in dismissing his § 1983 claim for deprivation of property. See Zinermon v. Burch, 494 U.S. 113, 127-28 (1990); Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985).

Saucedo also asserts that his civil rights were violated when prison officials filed a false disciplinary charge against him. The district court correctly determined that Saucedo's assertions concerning his disciplinary proceeding were barred by Heck v. Humphrey, 512 U.S. 477 (1994); cf. Wilkinson v. Dotson, 544 U.S. 74, 82 (2005). Further, as for the district court's determination that certain claims were barred for Saucedo's failure to exhaust administrative remedies, Saucedo does not challenge this determination. As a result, Saucedo has abandoned this issue, and this court need not address it. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993); Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

Saucedo further asserts that he should have been afforded an opportunity to amend his complaint before it was dismissed. The district court acted within its authority when it dismissed Saucedo's complaint without affording Saucedo the opportunity to

amend his complaint. See § 1915(e). A district court does not err in dismissing a case without providing an opportunity to amend when no viable claim is perceptible from the underlying facts asserted in the plaintiff's pleadings. See Jones v. Greninger, 188 F.3d 322, 326-27 (5th Cir. 1999).

AFFIRMED.