UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 91-2673

(Summary Calendar)

FREDDIE LEE MYLES,

Plaintiff-Appellant,

VERSUS

JAMES A. COLLINS, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court
For the Southern District of Texas
(CA H 88 655)

(August 19, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Freddie Lee Myles, an inmate of the Texas Department of Criminal Justice, Institutional Division ("TDCJ-ID"), brought suit under 42 U.S.C. § 1983 (1988) against several officials of TDCJ-ID. Proceeding pro se and in forma pauperis, pursuant to 28 U.S.C. § 1915 (1988), Myles alleged that the officials committed numerous violations of his federally-protected rights. The district court found all but one of Myles' claims to be frivolous, and dismissed

---

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

them with prejudice, pursuant to 28 U.S.C. § 1915(d). The district court dismissed the remaining claim without prejudice because it concerned an issue raised in a currently pending class action. Myles appeals, arguing that the district court erred in dismissing his claims. We affirm in part and vacate and remand in part.

I

Myles filed a complaint against eight TDCJ-ID officials in district court. In his complaint and more definite statement, Myles claimed that:

(a) Officers Richardson, Jones, Davidson, and Fleschner used excessive force against him, in violation of his constitutional rights;

(b) the destruction of his belongings during cell searches, as well as the confiscation of his fan, amounted to unlawful deprivations of his property;

(c) the search of his cell by Officer Richardson and Captain Bell was unlawful;

(d) various disciplinary charges, particularly those filed against him as a result of the fan incident, were fabricated and arbitrary;

(e) he was denied his constitutionally-protected right to privacy by being observed in the shower by female officers, and by frequent, degrading, and unnecessary strip-searches;

(f) his continuing detention in administrative segregation violated his constitutional rights;

(g) he was denied access to the courts, because

(i) he was provided insufficient paper and other writing materials to draft documents in his various legal actions,

(ii) his legal mail was frequently delayed, lost, stolen, and censored by TDCJ-ID officials, and

(iii) he was denied visits with his brother and other TDCJ-ID inmates, which interfered with his prosecution of his legal claims.

Myles also filed with the district court three motions for injunctive relief. In these motions Myles repeated many of the allegations contained in his complaint and more definite statement. Myles also asserted that several female prison guards were prostitutes, that he reported their conduct to the FBI, and that he was poisoned by Sergeant Bennett (the cousin of one of the alleged prostitutes) in retaliation for his reports to the FBI.

Myles also filed a motion for appointment of counsel, which the district court denied.[1]

After conducting a *Spears* hearing,[2] the district court dismissed without prejudice Myles' claim that his right to privacy was violated when female officers observed him taking a shower. The district court dismissed the remainder of Myles' claims as either frivolous or malicious, pursuant to 28 U.S.C. § 1915(d)

---

[1] Myles asserted a number of other claims before the district court. However, because he does not mention those claims in his brief on appeal, and because none of those claims pertains to jurisdiction, we do not address them. *See United States v. Bigler*, 817 F.2d 1139, 1140 (5th Cir. 1987) ("This court has repeatedly ruled that it will not consider issues . . . that are not raised by the litigants on appeal except when they undermine the court's jurisdiction.").

[2] *See Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) (holding that the district court may refer a prisoner's section 1983 suit to a magistrate, for development of the facts behind the prisoner's claims).

(1988). Myles appeals, arguing that the district court's dismissal of his claims was erroneous.[3]

II

A district court may dismiss an in forma pauperis ("IFP") complaint as frivolous, pursuant to 28 U.S.C. § 1915(d) (1988), if it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831, 104 L. Ed. 2d 338 (1989); *Ancar v. Sara Plasma, Inc.,* 964 F.2d 465, 468 (5th Cir. 1992); *Mayfield v. Collins,* 918 F.2d 560, 561 (5th Cir. 1990). In order to save prospective defendants from the inconvenience and

---

[3] Myles' arguments consist of general assertions that the district court's rulings were erroneous, along with extensive repetition of the factual allegations already presented in his pleadings. In one of his few specific attacks on the district court's decision, Myles claims that the district court "changed [his] claims up" before ruling in favor of the defendants. *See* Brief for Myles at 27. Because Myles proceeds pro se and without the benefit of legal training, we point out, based on our extensive review of the record, that the district court fairly represented Myles' allegations in its order of dismissal. The differences in the district court's and Myles' articulations of his claims represent the district court's attempt to formulate some legal basis for Myles' claims. The district court's conscientious efforts in this regard do not amount to grounds for reversal.

Myles also claims, for the first time on appeal, that (1) he is being forced to work in the prison kitchen, even though he is incapable of doing so, (2) he is being exposed to dangerous chemicals, (3) the TDCJ-ID requirement that he resolve disputes informally violates his rights under the First Amendment, (4) he has been subjected to double jeopardy in prison disciplinary proceedings, and (5) his medical records are being falsified to conceal injuries inflicted upon him by prison guards. Because Myles raises these claims for the first time on appeal, we will not consider them. *See Singleton v. Wulff*, 428 U.S. 106, 120, 96 S. Ct. 2868, 2877, 49 L. Ed. 2d 826 (1976) ("It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below."); *Pierre v. United States*, 525 F.2d 933, 936 (5th Cir. 1976) ("We must necessarily confine ourselves to only the issues presented to the district court.").

unnecessary expense of answering such complaints, courts often dismiss IFP cases sua sponte prior to the service of process. *Neitzke,* 490 U.S. at 324, 109 S. Ct. at 1831. District courts have broad discretion in determining whether a complaint is frivolous justifying dismissal under section 1915(d). *Mayfield*, 918 F.2d at 561. Accordingly, we review a section 1915(d) dismissal for abuse of discretion. *Denton v. Hernandez,* ___ U.S. ___, 112 S. Ct. 1728, 1734, 118 L. Ed. 2d 340 (1992); *Mayfield,* 918 F.2d at 561 (5th Cir. 1990).

A

Myles claimed that TDCJ-ID officers used excessive force against him on two separate occasions. *See* Record on Appeal at 25-26, 31. The district court dismissed both of Myles' claims of excessive force as frivolous, citing our opinion in *Huguet v. Barnett*, 900 F.2d 838 (5th Cir. 1990), *overruled in part by Hudson v. McMillian*, ___ U.S. ___, 112 S. Ct. 995, 1000, 117 L. Ed. 2d 156 (1992). *See* Record on Appeal at 189-91. In *Huguet*, we held that in order for a convicted prisoner to prevail on an Eighth Amendment claim of excessive force, the prisoner must prove (1) a significant injury, which (2) resulted directly and only from use of force that was clearly excessive to the need, the excessiveness of which was (3) objectively unreasonable, and (4) that the use of force constituted an unnecessary and wanton infliction of pain. *Huguet*, 900 F.2d at 841. The prisoner's claim fails where any one of these elements is not proved. *Id.*

In dismissing Myles' claims, the district court relied upon the second element of *Huguet*))that the prisoner's injury must have resulted directly and only from the use of force that was clearly excessive to the need. According to Myles' own admission, both of the alleged incidents of excessive force began with Myles' refusal to obey orders. *See* Record on Appeal at 25-26, 31. Therefore, the district court reasoned that Myles' "injuries did not result directly and only from the force used, but also from his own refusal to comply with direct orders." *See id.* at 191. The district court concluded that, because Myles could not satisfy the second element of *Huguet*, his excessive force claims were frivolous. *See id.* at 189-91. Because Myles' disobedience defeated his excessive force claim, the district court gave little consideration to whether the prison officials' response might have been excessive to the need created by Myles' refusal to obey orders.[4]

The district court misread the second element of *Huguet*. As applied by the district court, *Huguet* would bar a claim for

---

[4] In its order of dismissal, the district court stated:

> When [Myles] refused to re-enter his cell in administrati[ve] segregation, *it may be that the officers used excessive force* to put him in his cell. However, the plaintiff's injuries did not result directly and only from the force used, but also from his own refusal to comply with direct orders. The plaintiff's allegations of a significant injury, resulting directly and only from an excessive use of force . . . have no realistic chance of ultimate success and no arguable basis in law and fact."

Record on Appeal at 190-91 (citations omitted) (emphasis added).

excessive force *any* time the use of force arose from a prisoner's refusal to obey an order, even though the official's response to the prisoner's disobedience was totally excessive and unreasonable. This result certainly offends *Huguet*, which presupposed that many uses of force would be prompted by prisoners' breaches of discipline. *See Huguet*, 900 F.2d at 841 (The district court presiding over an excessive force claim must determine "`whether force was applied in a good faith effort to maintain or restore discipline.'"). The district court therefore committed an abuse of discretion in dismissing Myles' excessive force claim solely because of Myles' refusal to obey orders. The district court should have considered whether the officers' response was clearly excessive to the need represented by Myles' disobedience. Accordingly, the district court's dismissal is vacated as to the defendants who allegedly assaulted Myles.[5] *See Oliver v. Collins*, 914 F.2d 56, 60 (5th Cir. 1990) (vacating erroneous dismissal of prisoner's excessive force claim and remanding for further proceedings). On remand the district court should reconsider, in light of *Hudson v. McMillian*, Myles' claims against those defendants.

The other defendants,[6] however, would have been responsible for the alleged events, if at all, only in a supervisory capacity. As to the latter category of defendants, the district court's

---

[5] Officers Richardson, Jones, Fleschner, and Davidson.

[6] Former TDCJ director Lynaugh, Warden Beaird, and Captains Williams and Bell.

dismissal of Myles' excessive force claim is affirmed, because a section 1983 civil rights claim cannot rest on a theory of vicarious liability or respondeat superior.[7] *See Williams v. Luna*, 909 F.2d 121, 123 (5th Cir. 1990) (holding that section 1983 action against prison officials was properly dismissed because it was premised merely on a theory of respondeat superior).

With respect to the excessive force claim against officers Jones and Richardson, *see* Record on Appeal at 31, the district court also relied on the first element of *Huguet*, which required that the prisoner prove a significant injury. *See* Record on Appeal at 190-91. In its order of dismissal, the district court reviewed Myles' medical evidence and then concluded that "[Myles] has not established by his pleadings that he suffered a significant injury." *See id.* at 193. As a result, the district court determined that Myles' excessive force claim was frivolous. *See id.* at 190-91.

However, while Myles' appeal was pending, the Supreme Court overruled the significant injury requirement of *Huguet* in *Hudson v. McMillian*, ___ U.S. ___, 112 S. Ct. 995, 1000, 117 L. Ed. 2d 156 (1992). Under *Hudson*, the use of excessive force against a convicted prisoner may give rise to an Eighth Amendment claim, even though the use of force does not result in a significant injury.

---

[7] Our holding in this regard applies equally to each of Myles' claims, not just to his excessive force claims. Therefore, wherever Myles has asserted a claim on the basis of respondeat superior, we affirm the dismissal of that claim as to the defendants who were allegedly responsible only in a supervisory capacity.

See id. Consequently, the dismissal of Myles' excessive force claim, based on the significant injury element of *Huguet*, is vacated, and this case is remanded for reconsideration of Myles' excessive force claim in light of *Hudson*. *See Shabazz v. Lynaugh*, 974 F.2d 597 (5th Cir. 1992) (dismissal of excessive force claim for lack of significant injury vacated and remanded in light of *Hudson*).

B

Myles claimed that the confiscation of his fan and other property, as well as the destruction of his belongings during cell searches, violated his constitutional rights. *See* Record on Appeal at 1, 22-23, 27-32, 145. The district court dismissed Myles' claim for confiscation of his fan as frivolous, because Myles "ha[d] a post deprivation remedy for . . . negligent or intentional deprivations of his property in the courts of the State of Texas and, therefore, ha[d] not implicated the constitutional guarantees of the due process clause." *See* Record on Appeal at 194. The district court did not explicitly address Myles' claim that his property was destroyed during cell searches.

In *Parratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981), where a prisoner's property was negligently lost by prison officials, the Supreme Court held that the state had not violated the Due Process Clause, because the state provided a tort remedy for redress of the deprivation of property. *See id.* at 544, 101 S. Ct. at 1917. However, as the Court made clear one year

later in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982), a crucial factor in the *Parratt* decision was the fact that the prisoner's property was deprived through "random and unauthorized" conduct, which was not susceptible of a pre-deprivation hearing. *See id.* at 435-36, 102 S. Ct. at 1158. A post-deprivation tort remedy was found sufficient to satisfy the requirements of due process in *Parratt* because pre-deprivation process was not feasible. *See id.* The holding in *Parratt*))that the state's provision of a tort remedy satisfies due process))does not apply where the deprivation of property results from an established state procedure, rather than a random and unauthorized act by state officers. *Hudson v. Palmer*, 468 U.S. 517, 534, 104 S. Ct. 3194, 3204, 82 L. Ed. 2d 393 (1984) (discussing *Logan*).

It appears from Myles' allegations that his fan was ostensibly confiscated as contraband pursuant to TDCJ-ID policies. Myles quotes property officer Burby as saying "Your fan is contraband and will not be returned to you." *See* Brief for Myles at 23. Myles also refers to a disciplinary hearing, and to disciplinary reports drafted by TDCJ-ID officials, which stated that Myles' fan was contraband. *See id*. at 9, 18-19. The record supports the conclusion that the fan was confiscated as contraband pursuant to TDCJ-ID procedures. *See* Exhibits to Spears Hearing, Texas Department of Corrections Disciplinary Hearing Record No. 279885 (citing Myles for "possession of contraband," namely "a fan that had the back screws and the back cover missing").

Myles contends, however, that the confiscation was unlawful, because his fan actually was not contraband under TDCJ-ID regulations. *See* Brief for Myles at 18 (asserting that, under TDCJ-ID regulations, items purchased at the unit commissary may not be considered contraband); *id.* at 23-24 (arguing that TDCJ-ID policy designating altered items as contraband did not apply to fan, because Myles was using it according to the manufacturer's specifications). Myles further contends that TDCJ-ID officials took his fan and other property so that they could later sell it outside the prison. *See* Record on Appeal at 1.

The district court dismissed Myles' claim as frivolous because Texas law provides Myles an adequate remedy in tort. In so doing the district court properly relied on the rule announced in *Parratt v. Taylor*. Although Myles alleges that the fan was confiscated according to established TDCJ-ID procedures, this case is nonetheless governed by the rule announced in *Parratt,* because Myles does not allege that the state's procedures are unconstitutional, or that the procedures themselves caused the deprivation of his property. *See Logan,* 455 U.S. at 436, 102 S. Ct. at 1158 (holding that the *Parratt* rule is inapplicable where "it is the state system itself that destroys a complainant's property interest, by operation of law"). The district court therefore did not abuse its discretion by dismissing Myles' claim regarding the confiscation of his fan.

The district court has not addressed Myles' claim that prison officials damaged and destroyed his property during cell searches.

Myles alleges that during "shake-downs" of his cell officers routinely scatter his personal belongings all over his cell, outside his cell, and even in his toilet. According to Myles, many of his belongings have been damaged or destroyed. Because the conduct alleged by Myles would amount to a random and unauthorized deprivation of property, Myles' claim is governed by the rule announced in *Parratt v. Taylor*. Because state law provides an adequate remedy for the alleged deprivation of property, on remand Myles' claim regarding the destruction of his property during cell searches should be dismissed.

C

Myles claimed that various searches of his cell, particularly the search coinciding with the confiscation of his fan, violated his constitutional rights. In dismissing Myles' claim, the district court correctly noted that a convicted prisoner has no reasonable expectation of privacy in his cell, and therefore has no right under the Fourth Amendment to be free from searches of that cell. *See Palmer*, 468 U.S. at 525-26, 104 S. Ct. at 3200 (holding that the Fourth Amendment does not apply to prison cell, and therefore summary judgment was properly entered against prisoner who claimed that his cell had been searched merely for the purpose of harassment).

However, if searches amount to harassment so severe that they constitute cruel and unusual punishment, those searches will support a claim under the Eighth Amendment. *See id.* at 530, 104 S.

Ct. at 3202 ("Our holding that respondent does not have a reasonable expectation of privacy enabling him to invoke the protections of the Fourth Amendment does not mean that he is without a remedy for calculated harassment . . . . The Eighth Amendment always stands as a protection against `cruel and unusual punishments.'"). Myles alleged that the searches of his cell were arbitrary, and amounted to harassment. However, neither Myles' allegations nor any information in the record supports that conclusion.[8] Consequently, there was no basis for Myles' claim of harassment, and the district court did not abuse its discretion in dismissing Myles' claim as frivolous. *See Denton*, 112 S. Ct. at 1733 (holding that a court may dismiss a claim as factually frivolous if the facts alleged are "clearly baseless").

D

Disciplinary charges were filed against Myles in connection with the two incidents which gave rise to his excessive force claims. Myles alleged that these charges were arbitrary, fabricated, and filed merely for the purpose of harassment, and that the disciplinary proceedings which followed were unfair. These allegations are best characterized as claiming a deprivation of liberty without due process of law. *See Collins v. King*, 743

[8] On the only specific occasion which Myles describes, his cell was searched because he had hung a bed sheet over his cell door, obscuring the guards' view of the inside of the cell. Because of the danger that Myles had hung the sheet in order to conceal some illegal activity, the officers' decision to search Myles' cell was not arbitrary and did not amount to harassment.

F.2d 248, 250 (5th Cir. 1984) (characterizing allegations of false disciplinary charges and unfair disciplinary hearing as allegations of deprivation of liberty without due process of law). The district court dismissed these claims as frivolous.

A prisoner's claim "that he was improperly charged with things he did not do . . . does not state a deprivation of due process." *Id.* at 253. "`The constitution demands due process, not error-free decision-making . . . .' If the disciplinary proceeding was otherwise fair and adequate, the opportunity that it afforded [the prisoner] to clear himself of misdeeds which he did not commit sufficed." *Id.* at 254 (*citing McCrae v. Hankins*, 720 F.2d 863, 868 (5th Cir. 1983)). The adequacy of procedural protections afforded a prisoner in a disciplinary proceeding is determined by balancing the liberty interest of the prisoner against the administrative interests of the prison. *See McCrae*, 720 F.2d at 868 (balancing a prisoner's interest in certain conditions of confinement against the state's interest in preventing the possession of contraband in the prison).

Myles was found guilty of the infraction charged at each of his disciplinary hearings.[9] Myles' claim that he was falsely charged with these violations does not raise a constitutional claim of deprivation of due process. Therefore, we must look, as the district court did, to the adequacy of the procedural protections afforded Myles by TDCJ-ID.

---

[9] *See* Exhibits to Spears Hearing, Texas Department of Corrections Disciplinary Hearing Records Nos. 379551, 279884, 279885, and 279886.

Myles received all the procedural protections that the Due Process Clause required. The disciplinary proceedings against Myles affected some of his privileges, such as recreation and visitation, but did not affect the duration of his confinement or the level of custody in which he was housed.[10] Myles was provided advance written notice of the charges against him, the opportunity to appear, to be heard, to present evidence, and to confront and cross-examine his accusers, as well as the assistance of substitute counsel, and a written explanation of the decision in each proceeding.[11] Balancing the prison's interest in maintaining order and discipline against the relatively minor liberty interests curtailed as a result of the disciplinary proceedings, the procedural protections afforded Myles were certainly adequate.[12]

---

[10] Myles was already confined to administrative segregation when he committed the disciplinary violations at issue here.

[11] *See* Exhibits to Spears Hearing, Texas Department of Corrections Disciplinary Hearing Records Nos. 379551, 279884, 279885, and 279886.

[12] *See Hewitt v. Helms*, 459 U.S. 460, 477, 103 S. Ct. 864, 874, 74 L. Ed. 2d 675 (1983) (holding that a prisoner's right to due process was not violated where the disciplinary proceeding did not affect the length of the prisoner's incarceration or move the prisoner to solitary confinement, and the prisoner received notice of the charges against him, an opportunity to relate his version of the facts, and an informal review of the charges by a prison official); *Wolff v. McDonnell*, 418 U.S. 539, 563-67, 94 S. Ct. 2963, 2978-79, 41 L. Ed. 2d 935 (1974) (holding, where the length of prisoners' confinement was at stake, that due process was satisfied by giving prisoners advance written notice of disciplinary charges, an opportunity to present evidence, and a written statement explaining the outcome of the disciplinary proceeding); *McCrae*, 720 F.2d at 868 (holding that notice of charges, a hearing, and the opportunity to make a statement satisfied due process where prison disciplinary proceedings led to confinement of the prisoner in extended lockdown).

Consequently, the district court did not abuse its discretion in dismissing Myles' claim.

E

Myles claimed that his right to privacy was violated by TDCJ-ID's practices of (1) allowing female guards to view male inmates, including Myles, while they shower, and (2) requiring administrative segregation inmates to submit to strip searches whenever they leave and return to their cells.[13]

The district court dismissed the former claim without prejudice, because it was also raised in a class action which was currently pending at the class certification stage. The district court's ruling was not an abuse of discretion. *See West Gulf Maritime Ass'n v. ILA Deep Sea Local 24*, 751 F.2d 721, 729 (5th Cir. 1985) ("`As between federal district courts, . . . the general principle is to avoid duplicative litigation.' . . . [A] district court may dismiss an action where the issues presented can be resolved in an earlier-filed action pending in another district court." (citations omitted)).

TDCJ-ID's administrative segregation strip search policy was upheld in *Hay v. Waldron*, 834 F.2d 481, 485-86 (5th Cir. 1987) (holding that administrative segregation strip search policy did not violate the Fourth Amendment). The Louisiana practice of

[13] Myles' complaint))that he was unconstitutionally denied basic necessities (such as recreation, showers, medical care, and meals) because he refused to submit to strip searches))does not constitute a separate claim, but merely describes a particular aspect of TDCJ-ID's strip search policy.

allowing female guards to observe strip searches of male inmates was approved in *Letcher v. Turner*, 968 F.2d 508, 510 (5th Cir. 1992) (holding that strip searches, viewed by female officers, did not violate prisoner's right to privacy). In light of these cases, we conclude that the district court did not abuse its discretion in concluding that Myles' strip search claim was frivolous.

F

Myles claimed that his constitutional rights were violated by his continuing confinement in administrative segregation. The district court dismissed this claim as frivolous, on the grounds that (1) "an inmate has no liberty interest in his custody classification under the Due Process Clause;" (2) Myles was not confined to administrative segregation without the benefit of adequate procedural protections; and (3) Myles' confinement in administrative segregation was justified by TDCJ-ID's interests in security and discipline. *See* Record on Appeal at 187-89.

We hesitate to endorse the district court's broad statement that an inmate has no liberty interest, protected by Due Process, in his custody classification. In support of that conclusion the district court cited *Meachum v. Fano*, 427 U.S. 215, 226, 96 S. Ct. 2532, 2539, 49 L. Ed. 2d 451 (1976). There the Supreme Court held that a prisoner had no protected liberty interest in remaining at a particular correctional facility, because state law did not create such an interest. *See id*. at 226, 96 S. Ct. at 2539 ("Here, Massachusetts law conferred no right on the prisoner to remain in

the prison to which he was initially assigned . . . . The predicate for invoking the protection of the Fourteenth Amendment . . . is totally nonexistent in this case."). However, *Meachum* does not stand for the proposition that prisoners never have a protected liberty interest in their classification or housing assignment. Relying as it does on Massachusetts law, *Meachum* represents the well-established proposition that the existence *vel non* of a protected liberty interest depends upon relevant state law. *See id.*; *see also Hewitt v. Helms*, 459 U.S. 460, 471-72, 103 S. Ct. 864, 871, 74 L. Ed. 2d 675 (1983) (holding that inmate had a liberty interest in not being confined to administrative segregation, but only because state law restricted the discretion of prison officials in assigning prisoners to administrative segregation). Furthermore, at least one court has held that inmates in Texas prisons have a protected liberty interest in not being confined to administrative segregation. *See Ruiz v. Estelle*, 503 F. Supp. 1265, 1365-67 (S.D. Tex. 1980) (discussing procedural protections required by due process before a Texas prisoner may be confined in administrative segregation).

However, assuming *arguendo* that Myles has a protected liberty interest in not being confined in administrative segregation, we agree with the district court's conclusion that Myles received adequate procedural protections. Before confining a prisoner to administrative segregation, and during the prisoner's confinement there, TDCJ-ID must comply with the procedural requirements of *Wolff v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935

(1974). *See Ruiz*, 503 F. Supp. at 1365 ("Due process in the administrative segregation context calls for no less than the procedural protections outlined in *Wolff v. McDonnell*."). The procedural safeguards required are (1) the opportunity to appear and be heard; (2) written notice, at least 24 hours in advance, of the administrative segregation hearing; (3) a written statement of the reasons for confinement in administrative segregation; (4) the right to call witnesses and present documentary evidence; and (5) the assistance of counsel or a substitute, where the prisoner is unable to represent himself. *See Wolff*, 418 U.S. at 563-70, 94 S. Ct. at 2978-82. Furthermore, during confinement in administrative segregation, prison officials must periodically review the inmate's case and consider whether confinement in administrative segregation should be continued. *See Hewitt*, 459 U.S. at 476 n.9, 103 S. Ct. at 874 n.9.

Myles' disciplinary records reveal that, at his initial administrative segregation hearing, Myles received all of the procedural safeguards listed above. *See* Exhibits to Spears Hearing, Texas Department of Corrections Administrative Segregation Report No. 6147. Furthermore, during his confinement in administrative segregation, Myles was afforded a number of hearings reviewing his case. Based on this record, the district court properly concluded that the process which Myles received satisfied the requirements of the law.

We also agree with the district court that the original decision to confine Myles to administrative segregation did not

violate his constitutional rights. Based on Myles' extensive history of disciplinary problems, including assaults on prison staff, the decision to confine Myles to administrative segregation was not arbitrary, capricious, or an abuse of discretion. *See Smith v. Rabalais*, 659 F.2d 539, 545 (5th Cir. 1981) (holding that a decision of a prison disciplinary committee is reviewed to determine whether the committee's actions were "arbitrary, capricious or an abuse of discretion"), *cert. denied*, 455 U.S. 992, 102 S. Ct. 1619, 71 L. Ed. 2d 853 (1982).

Myles also claimed that his constitutional rights were violated by the conditions of his confinement in administrative segregation, particularly restrictions on his visitation and recreation privileges, denial of good time credits, and deprivation of his medically prescribed shoes (designed to alleviate Myles' flat feet and athlete's foot). The district court dismissed all of these claims as frivolous, citing *Mikeska v. Collins*, 900 F.2d 833 (5th Cir. 1990), *withdrawn in part and reinstated in part*, 928 F.2d 126 (5th Cir. 1991) (per curiam). In *Mikeska* we held that administrative segregation prisoners were not entitled to the same privileges as other inmates, because "[p]rison officials have the discretion to determine whether and when to provide prisoners more than reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety." *Mikeska*, 900 F.2d at 837 (citing *Fulford v. King*, 692 F.2d 11 (5th Cir. 1982)). Because the prison officials acted within their discretion in restricting

Myles' privileges, the district court did not abuse its discretion in dismissing Myles' claim.

G

Myles alleged that a number of TDCJ-ID policies had the effect of denying him access to the courts. Myles complained of TDCJ-ID's practices of (1) limiting the paper and other supplies available to inmates for drafting legal documents, (2) delaying, losing, and confiscating his legal mail, and (3) denying him visits with his brother and other inmates, with whom he needed to confer in order to develop his legal arguments. The district court dismissed all of these claims as frivolous.

(i)

The district court considered Myles' claim of inadequate supplies to be "fanciful," because Myles "uses a surfeit of paper and words and could prosecute his claims with fewer words and less paper." *See* Record on Appeal at 199 (Order of Dismissal). We agree with the district court. Because Myles could have presented his claims with considerably fewer supplies,[14] he did not make a colorable claim that he was harmed by TDCJ-ID's supply restrictions. Therefore, Myles' claim was clearly baseless, and the district court did not abuse its discretion in ordering

[14] We are aware that Myles is a layman, and we would not expect him to draft his pleadings and motions with the precision of a trained attorney. However, Myles could thoroughly present his claims in far fewer pages, merely by writing smaller and making each allegation only once, rather than two or three times.

dismissal. *See Denton*, 112 S. Ct. at 1733 (holding that a court may dismiss a claim as factually frivolous if the facts alleged are "clearly baseless").

(ii)

Myles also alleged that TDCJ-ID officials delayed, lost, and confiscated his legal mail, in order to prevent him from prosecuting his claims against them. The district court did not abuse its discretion by dismissing this claim as frivolous. In order to make out a claim for interference with his legal mail, Myles had to allege that he suffered some disadvantage in a legal proceeding. *See Jackson v. Cain*, 864 F.2d 1235, 1244 (5th Cir. 1989) (upholding summary judgment in favor of prison officials, where inmate alleged mail tampering but failed to allege denial of access to the courts). Myles did not allege that he suffered such a disadvantage: he failed to point to a single piece of legal mail that failed to reach its destination in a timely manner. Furthermore, Myles' assertion that TDCJ-ID officials were stealing his mail in order to thwart his legal actions is patently fanciful, in view of the legal documents which somehow reached the district court and are now before us. Because Myles successfully mailed to the district court lengthy documents alleging prostitution, assaults, and theft on the part of TDCJ-ID officials, we can only regard as frivolous Myles' claim that those officials are screening Myles' mail and hijacking legal documents which might be damaging

to them. The district court did not abuse its discretion in dismissing this claim as frivolous.

(iii)

Myles claimed that he was denied access to the courts when prison officials refused to let him consult with his brother and other inmates about his legal claims. The district court dismissed Myles' claim as frivolous, citing *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977), in which the Supreme Court held that some source of legal information must be provided to prisoners to ensure their access to the courts. *See id.* at 828, 97 S. Ct. at 1498. Delivering the opinion of the Court, Justice Marshall mentioned that allowing inmates to assist each other with legal matters might be one acceptable program for providing them with legal information,[15] but the Court held that in North Carolina law libraries would satisfy constitutional requirements. *See id*. at 830, 97 S. Ct. at 1499 ("[A]dequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts . . . ."). The district court apparently concluded, based on this holding, that Myles' right of access to the courts did not entitle him to consult with other inmates, so long as he

[15] *See Bounds*, 430 U.S. at 830-31, 97 S. Ct. at 1499 ("Among the alternatives are the training of inmates as paralegal assistants to work under lawyers' supervision . . . .").

was provided with another source of legal information, such as a law library.[16]

We do not affirm the dismissal of Myles' claim, based on the rationale offered by the district court. The order of dismissal contained only the conclusory statement that visits with other inmates, which Myles sought, are not constitutionally required so long as law libraries are available.[17] *Bounds* may not support such a broad proposition: there the Court held only that inmates must be provided information about the law.[18] Yet Myles has not claimed that he needed to speak to other inmates in order to acquire legal information, and nothing in the record indicates that that was Myles' purpose in seeking to contact other inmates. However, although *Bounds* may not support the district court's dismissal of Myles' claim, Myles has failed to allege facts that show that he was denied access to the courts. Therefore, the district court did not abuse its discretion in dismissing this claim as frivolous.

---

[16] *See* Record on Appeal at 199 (Order of Dismissal) ("[T]he Constitution does not require that an inmate be allowed to visit with other inmates in order to protect his right of access to the courts if alternative means are available to insure the inmate's right of access such as the provision of adequate law libraries.")

[17] *See supra* note 16.

[18] *See Bounds*, 430 U.S. at 817-18, 97 S. Ct. at 1492-93 (holding that states must provide inmates with "law libraries or alternative sources of legal knowledge").

H

Myles' remaining claims require only brief discussion. In his first motion for injunctive relief, Myles alleged that Sergeant Bennett poisoned him after he informed the FBI that Sergeant Bennett's cousin, a female prison guard, was engaging in prostitution at the Wynne Unit in plain sight of administrative segregation prisoners. The district court dismissed this claim as frivolous. *See* Record on Appeal at 184. Myles has not alleged that any of the named defendants in this action were directly involved in the alleged prostitution or poisoning. The named defendants would have been involved, if at all, only in a supervisory capacity. Because a section 1983 civil rights claim cannot rest on a theory of vicarious liability or respondeat superior, *see Williams v. Luna*, 909 F.2d 121, 123 (5th Cir. 1990), the district court did not abuse its discretion by dismissing Myles' claim.

The district court denied Myles' motion for appointment of counsel. A federal court has discretion to appoint counsel under 28 U.S.C. § 1915(d) if doing so would advance the proper administration of justice. *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982). However, the district court is not required to do so, unless the case presents exceptional circumstances. *Id*. at 212. Because Myles' case did not feature exceptional circumstances, the district court did not abuse its discretion by denying Myles' motion.

III

For the foregoing reasons, we VACATE the district court's dismissal of Myles' excessive force claim, *see supra* II.A., and REMAND for reconsideration and further proceedings consistent with this opinion. However, we AFFIRM the dismissal of Myles' excessive force claim insofar as it is premised upon a theory of respondeat superior. We further direct that on remand the district court shall DISMISS Myles' claim regarding the destruction of his personal property during cell searches. *See supra* II.B. We AFFIRM the dismissal of all other claims.