

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 91-2761
Summary Calendar

STEVEN G. JAMES,

Plaintiff-Appellant,

VERSUS

HARRIS COUNTY TEXAS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-91-0670)

(February 26, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Steven G. James, a pretrial detainee confined in Harris Country Detention Facility, sued Harris County and various jail authorities under 42 U.S.C. § 1983 alleging (1) his freedom of religion was violated, (2) he has been denied access to court, (3) he has been denied adequate health care, (4) two jail authorities used excessive force against him, (5) he has been denied access to education, and (6) jail authorities conspired to steal the bond

¹ Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

money posted for James by his mother. The district court dismissed James's entire complaint as frivolous, and he appeals this dismissal.

ANALYSIS

I. Standard of Review

This Court reviews dismissal of a civil rights action filed by a pretrial detainee proceeding in forma pauperis for abuse of discretion. Parker v. Carpenter, 978 F.2d 190, 191 (5th Cir. 1992); Cay v. Estelle, 789 F.2d 318, 326 (5th Cir. 1986) (citing Green v. McKaskle, 788 F.2d 1116, 1120 (5th Cir. 1986)).

II. Freedom of Religion

James argues on appeal that prison officials have violated his freedom of religion under the First Amendment by (1) denying him the vegetarian diet he requires as a member of Wiccan faith, and (2) refusing him access to the jail chapel and forcing him to participate in a Christian prayer ceremony.

1. Denial of Vegetarian Diet

When he filed his original complaint, James was confined at the Harris County Detention Center, where special diets are unavailable. The district court, in dismissing this claim as frivolous, noted that James had declined the opportunity to be transferred to the Harris County jail, where special diets are available, because he believed he would have better access to a law library at the detention center. Because James has been offered, and has declined, the very relief he seeks, we conclude that the

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

2. Access to Jail Chapel

James argues that he was denied access to the Harris County Jail chapel and was forced to attend a Christian prayer ceremony which "caused [him] great embarrassment," in violation of his First Amendment rights.

In considering these claims, the district court noted that although pretrial detainees "retain their constitutional rights to a great extent, it is also true that the rights may properly be subjected to restrictions and limitations. See Hudson v. Palmer, 468 U.S. 517 (1984)." The court concluded that it was reasonable for jail authorities, in light of the shortage of jail personnel, to refuse to allow one detainee to be alone in the prison chapel. Furthermore, the damage James claims to have sustained from being forced to attend a Christian prayer ceremony, great embarrassment, does not rise to the level of a Constitutional deprivation. See Oliver v. Collins, 904 F.2d 278, 281 (5th Cir. 1990); Geter v. Fortenberry, 849 F.2d 1550, 1556 (5th Cir. 1988). The district court did not abuse its discretion by dismissing these claims as frivolous.

III. Access to Court

James argues that when he was transferred from the detention center to the Harris County Jail he was denied adequate access to the law library. It is well settled that prison inmates must be provided either with a law library or with individuals able to

provide legal help. Bounds v. Smith, 430 U.S. 817, 828 (1977). Furthermore, such detainees must be able to present their claims to the court without interference. See Crowder v. Sinyard, 884 F.2d 804 (5th Cir. 1989). Before an inmate may prevail on a claim that he has been denied access to courts, however, he must demonstrate that his case suffered prejudice of some kind. Ryland v. Shapiro, 708 F.2d 967, 974-75 (5th Cir. 1983).

In dismissing this claim, the district court reasoned that James had failed to allege prejudice, and that his ability to show such prejudice was unlikely because the voluminous pleadings he had filed evidenced his ability to freely communicate with the courts. In our view, the district court did not abuse its discretion by dismissing this claim.

IV. Health Care

James alleges that he was denied adequate health care, but as the district court noted, he does not contend that he suffered from any injury or illness that has gone untreated. Furthermore, in other sections of his original complaint, he mentions dental and psychological care received through the jail. The district court did not abuse its discretion by dismissing this claim.

V. Excessive Force

James alleges that two deputies, Coker and Maddox, assaulted him on January 12, 1991. He claims that while he was in the dining hall, Maddox twice ordered him to leave. James refused the first time, but complied the second time and asked Maddox what his name was. This inquiry allegedly angered the deputies. Both forcibly

removed him from the dining hall, pushed him into a brick wall, and then Coker slammed his knee into James's testicles. In his original complaint, James recounted this story, but did not allege any specific injury that resulted from this encounter.

In considering this claim, the district court noted that a citizen who has been arrested but not yet tried is protected from the use of excessive force that amounts to punishment by the due process clause of the Fourteenth Amendment. Graham v. Connor, ___ U.S. ___, 109 S.Ct. 1865, 1872 (1989). The court then stated that in order to prevail on his excessive force claim, James must prove:

- (1) a significant injury, which
- (2) resulted directly and only from the use of force that was clearly excessive to the need; and the excessiveness of which was
- (3) objectively unreasonable.

Johnson v. Morel, 876 F.2d 477, 480 (5th Cir. 1989). Upon noting that James had failed to allege any injury, the court dismissed this claim.

VI. Remaining Claims

James's remaining claims, that he has been denied access to education and that jail officials conspired to steal his bail money from his mother, are without a foundation in law. The district court properly dismissed these claims.