UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1693
Summary Calendar

THOMAS M. PIERCE, a/k/a
Thomas M. Taylor,

Plaintiff-Appellant,

versus

WARDEN OF TARRANT COUNTY JAIL,
John Doe, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court for the
Northern District of Texas
(4:92cv199-Y)

May 6, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Thomas M. Pierce, a/k/a Thomas M. Taylor, *pro se* and *in forma pauperis*, appeals from the dismissal of his civil rights suit. We **AFFIRM**.

I.

In March 1992, Pierce, an inmate of the Arizona Department of Corrections, filed a 42 U.S.C. § 1983 action against the sheriff of

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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 Pursuant to that rule, the court has determined that this opinion should not be published.

Tarrant County, Texas, the warden of the county jail, and ten unknown defendants, alleging overcrowding, unsanitary conditions, and other problems.[2] Pierce alleged that his legs and back hurt "for months after this happened and still trouble me," and further alleged that he was denied medication for headaches, back pain, and arthritis. He claimed that the conditions he complained of constituted cruel and unusual punishment, in violation of his constitutional rights.

The defendants moved for dismissal or for summary judgment, contending that Pierce failed to allege any injury or deprivation of constitutional rights, that there was no showing of "deliberate indifference" or of a culpable state of mind on the part of any defendant, and that they were entitled to qualified immunity. In response to Pierce's motion for clarification, the district court ruled that the defendants' motion would be treated as a motion for summary judgment, because it was supported by affidavits.

On July 31, the district court dismissed Pierce's complaint against the ten unnamed defendants without prejudice, finding those claims frivolous under 28 U.S.C. § 1915(d). It also granted the sheriff's and warden's motion for summary judgment, holding that they were entitled to qualified immunity, because Pierce had failed to provide any evidence demonstrating that they had violated any of

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[2] For example, Pierce alleged that he was forced to sleep on the floor, that there were insects and mice in his "pod", and that the lighting, laundry, and ventilation were inadequate. He also complained about telephone and law library privileges, the quality of the food, and the availability of medical care and religious services.

his clearly established constitutional rights. Within ten days of entry of the judgment, Pierce moved for reconsideration, which the district court construed as a motion for new trial under Fed. R. Civ. P. 59(a). Pierce filed another notice of appeal after the district court denied his motion for new trial, but specified that he was appealing only from the final judgment; the notice did not refer to the denial of his motion.

II.

A.

Pierce contends that the district court committed reversible error by dismissing the complaint against the ten unknown defendants, after having ruled that the defendants' motion would be treated as a motion for summary judgment.[3] The district court explained that Pierce was not prejudiced by its decision to dismiss those claims under § 1915(d), because Pierce had not responded to the defendants' motion.

"A claim is frivolous under § 1915(d) only if `it lacks an arguable basis either in law or in fact.'" ***Parker v. Fort Worth Police Dep't***, 980 F.2d 1023, 1024 (5th Cir. 1993) (quoting ***Denton v. Hernandez***, ___ U.S. ___, 112 S. Ct. 1728, 1733 (1992)). We review a § 1915(d) dismissal only for abuse of discretion. ***Id***.

Pierce's claims against the unknown defendants had no arguable basis in law or fact. The district court properly considered that the unknown defendants were not identified in any manner, and that

[3] Pierce does not appeal the summary judgment awarded the sheriff and warden.

Pierce's complaint does not specify any action or inaction by any unknown defendant. Accordingly, Pierce's legal theories, to the extent that they exist, are indisputably meritless. *See* ***Gartrell v. Gaylor***, 981 F.2d 254, 256, 259 (5th Cir. 1993). Pierce was not prejudiced by the district court's dismissal of his claims against the unknown defendants under § 1915(d), rather than by summary judgment; and we find no abuse of discretion.

B.

Next, Pierce asserts that the district court erred by granting only part of the extension of time he requested for responding to the defendants' motion. Extensions of time for responding to motions for summary judgment are governed by Fed. R. Civ. P. 56(f):

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

We review Rule 56(f) rulings for abuse of discretion. ***Cormier v. Pennzoil Exploration & Production Co.***, 969 F.2d 1559, 1561 (5th Cir. 1992).

The defendants' motion was filed on April 24. In its order granting Pierce's motion for clarification, the district court extended the time to respond until June 22. On June 24, Pierce requested a 45-day extension, until August 13. The district court partially granted the request, extending the deadline until July 29. Although Pierce asserts that he mailed a response to the

defendants' motion on July 28 (as discussed *infra*), the record contains no indication that he did so.

The district court did not abuse its discretion by refusing to grant the full extension of time requested by Pierce. Pierce was given over three months within which to respond. In its order partially granting Pierce's request, the district court warned Pierce that no further extensions would be granted. Pierce's claims that he did not have sufficient time to respond to the complaint, because of medical appointments and the length of the defendants' motion, are being raised for the first time on appeal, and, therefore, need not be considered. ***United States v. Garcia-Pillado***, 898 F.2d 36, 39 (5th Cir. 1990).

C.

Finally, Pierce contends that the district court erred by failing to consider his earlier referenced response to the defendants' motion for summary judgment, which he asserts that he mailed on July 28 (one day before it was due). Attached to his reply brief is a copy of what purports to be his response, file-stamped by the district court on August 4, with the word "stricken" written over the date stamp.

Pierce contends that his response was timely filed under ***Houston v. Lack***, 487 U.S. 266, 276 (1988), which held that a *pro se* prisoner's notice of appeal was deemed filed on the date it was turned over to prison authorities for forwarding to the district court. However, our court has not extended the rationale of ***Houston v. Lack*** to cover any filings other than notices of appeal;

and we decline to do so in this case.[4] The district court did not abuse its discretion by failing to consider Pierce's untimely response.

III.

The judgment of the district court is

AFFIRMED.

[4] We note that Pierce did not attach a copy of his response to his motion for reconsideration. In any event, as noted, he does not appeal from the denial of reconsideration.