

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1748

Summary Calendar

EDWARD JAMES BREWER,

Plaintiff-Appellant,

v.

ANNETTE STRAUSS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:91-CV-1933-T)

(February 24, 1993)

Before KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:*

Edward James Brewer appeals the district court's dismissal of his 42 U.S.C. § 1983 claim as frivolous pursuant to 28 U.S.C. § 1915(d). Finding that the district court did not abuse its discretion, we affirm the dismissal.

I.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Brewer was confined in the Dallas County Jail on May 28, 1991 pursuant to an arrest on a charge of aggravated robbery. The incident which forms the basis of Brewer's complaint occurred on September 4, 1991, while Brewer was still a pretrial detainee.

During dinner on the date in question, Brewer approached Officer S. Zamora, an employee of the Dallas County Jail, and asked for more gravy on his meat. When Zamora refused, Brewer persisted in his requests only to become more agitated upon each of Zamora's refusals.¹ Zamora told Brewer to step outside the mess hall. When Brewer did not obey the order, Zamora pushed him towards the hallway, then locked him in a cell in the visiting room measuring approximately 4.5 feet by 4.5 feet for three and one-half hours.

Brewer subsequently filed this § 1983 action against S. Zamora and other jail employees and county officials, alleging a use of force and retaliatory punishment in violation of his constitutional rights. The district court dismissed his suit as frivolous under 28 U.S.C. § 1915(d). Brewer appeals the dismissal to this court.

II.

We review a 28 U.S.C. § 1915(d) dismissal for an abuse of discretion. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1734 (1992). For purposes of § 1915(d), a complaint may be properly dismissed as frivolous where it "lacks an arguable basis

¹ Brewer's final request was: "They are only going to throw that shit away anyway, you know that! It's not going to hurt you!"

either in law or in fact," Id. at 1733, or has no realistic chance of success. Pugh v. Parish of St. Tammany, 875 F.2d 436, 438 (5th Cir. 1989).

Because of Brewer's status as a pretrial detainee, the conditions of his confinement are governed by Bell v. Wolfish, 441 U.S. 520 (1979). In evaluating whether conditions of pretrial detention implicate constitutional concerns, the proper inquiry is whether those conditions amount to punishment of the detainee. Id. at 535. Punishment may not be constitutionally inflicted upon pretrial detainees. Id. at 535, 539. There is, however, a de minimus level of imposition with which the Constitution is not concerned. Id. at 539 & n.21.

Conditions of pretrial detention do not reach the threshold of constitutional concern until a showing is made of "genuine privations and hardship over an extended period of time." Id. at 542. Zamora's minimal physical contact with Brewer and his placing Brewer in a small cell for such a short period of time simply does not rise to a level of constitutional concern as defined by Wolfish.² See, e.g., id. at 543, 561-62. As a

² Alternatively, even if these facts did rise to a level of constitutional magnitude, prison officials are accorded the widest possible deference in maintaining security and preserving internal order. Wolfish, 441 U.S. at 540-41, 547. In the absence of substantial evidence to indicate that officials have exaggerated their response to these security considerations, courts should ordinarily defer to their expert judgment in such matters. Pell v. Procunier, 417 U.S. 817, 827 (1974); Wolfish, 441 U.S. at 540-41 & n.23, 548. Absent a showing of expressed intent to punish, the determination of whether something amounts to constitutionally proscribed punishment turns on whether an alternative purpose may be rationally connected with the restriction, and whether the restriction appears excessive in

result, we cannot find that the district court abused its discretion in dismissing Brewer's claims as frivolous.

III.

The district court's order dismissing Brewer's claims is AFFIRMED.

relation to the alternative purpose assigned to it. Wolfish, 441 U.S. at 538.

Brewer's behavior in the mess hall grew increasingly more aggressive in response to Zamora's repeated refusals to provide Brewer with more gravy. There is no evidence that Zamora exaggerated his response to the incident and its concomitant security concerns. Zamora's actions can be justified as a legitimate security measure taken to prevent the escalation of the verbal altercation into a major disturbance. The effective management of a detention facility is a valid objective that may justify the imposition of certain conditions on pretrial detainees and dispel any inference that such restrictions are intended as punishment. Id. at 540.