IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-1868

Summary Calendar

RICHARD A. KUYKENDALL,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director,
Texas Department of Criminal
Justice, Institutional Division,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(5:92 CV 0135 W)

June 10, 1993

( )

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Richard A. Kuykendall, a white inmate at the Texas Department of Criminal Justice, Institutional Division, filed a 42 U.S.C. § 1983 suit alleging that prison authorities engaged in racial discrimination by refusing to declare him "racially ineligible" to be celled with black or hispanic inmates and by not housing him in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

a cell with a white inmate. Kuykendall also filed a motion for temporary restraining order and/or preliminary injunction that would prevent prison authorities from 1) declaring him racially eligible to be celled with black or hispanic inmates unless selected by him; 2) "disregarding or misinterpreting the Federal mandate of Lamar v. Collins, Cause No. 72-H-1393," or violating Tex. Civ. Prac. & Remedies Code §§ 106.001(a)(5) and (6); 3) retaliating against him or his witnesses for litigating this cause of action; 4) transferring him to another prison unit for reasons not related to discipline or a change in classification; and 5) searches of his legal papers without his presence. The district court adopted the magistrate judge's recommendation over Kuykendall's objections and denied the requested injunctive relief. Kuykendall filed a motion seeking reconsideration of the court's denial which the court denied.

This court does not have the jurisdiction to review the denial of a temporary restraining order. Matter of Lieb, 915 F.2d 180, 183 (5th Cir. 1990). However, the district court's denial of a motion requesting injunctive relief is an interlocutory order that is immediately appealable under 28 U.S.C. § 1292(a)(1).

The decision to deny a preliminary injunction will be reversed by this court "only under extraordinary circumstances." White v. Carlucci, 862 F.2d 1209, 1211 (5th Cir. 1989). This court reviews that decision for an abuse of discretion. Id. In order for a preliminary injunction to issue, the movant must demonstrate (1) a substantial likelihood of success on the merits; (2) a substantial

threat that failure to grant the injunction will result in irreparable injury; (3) that the threatened injury outweighs any damage that the injunction will cause to the adverse party; and (4) that the injunction will not have an adverse effect on the public interest. Lakedreams v. Taylor, 932 F.2d 1103, 1107 (5th Cir. 1991). The movant for an injunction carries "a heavy burden of persuading the district court that all four elements are satisfied," and failure to carry the burden on any one of the four elements will result in the denial of the motion. Enterprise Intern. v. Corporacion Estatal Petrolera Ecuatoriana, 762 F.2d 464, 472 (5th Cir. 1985).

In recommending that Kuykendall's motion be denied, the magistrate judge noted that although Kuykendall had stated "his own fears and opinions . . . he has not set out in particular any harm which is presently threatened to him by the prison authorities." The magistrate judge concluded that Kuykendall had failed to satisfy his burden of showing a substantial likelihood of prevailing on the merits and of establishing irreparable injury.

The decision to deny the preliminary injunction was correct. First, Kuykendall's challenge to his classification is meritless. "Classification of prisoners is a matter left to the discretion of prison officials" because "[i]t is well settled that prison officials must have broad discretion, free from judicial intervention, in classifying prisoners in terms of their custodial status." McCord v. Maggio, 910 F.2d 1248, 1250 (5th Cir. 1990) (internal quotations and citation omitted). Furthermore, a policy

against segregation is reasonably related to the prison's legitimate interest in complying with the constitutional mandate against racial discrimination. Lee v. Washington, 390 U.S. 333, 333-34, 88 S.Ct. 994, 19 L.Ed.2d 1212 (1968) (prison authorities do have the right, acting in good faith and in particularized circumstances, to take into account racial tensions in maintaining security and good order in prisons).

Second, as the magistrate judge pointed out, Kuykendall has failed to show the applicability of the Lamar consent decree to his case. Although both parties refer to the Lamar decree in their briefs, it is not part of the record on appeal. See Green v. McKaskle, 788 F.2d 1116, 1122-23 (5th Cir. 1986) (consent decrees cannot serve as a basis for relief under § 1983).

Kuykendall has also failed to show a substantial likelihood of prevailing on the merits with regard to his allegations of retaliation. If the conduct claimed to constitute retaliation does not, by itself, raise an inference of retaliatory motivation, then the claim is conclusional unless the plaintiff makes other factual allegations showing a retaliatory motive. See Whittington v. Lynaugh, 842 F.2d 818, 819 (5th Cir.), cert. denied, 488 U.S. 840 (1988). Here, Kuykendall has failed to allege facts raising an inference of retaliatory motivation.

Furthermore, a prisoner has no general due process right to be assigned to a particular prison facility or to be free from transfer among units, even if the prisoner's conditions of confinement are substantially less favorable after he is

transferred. Meachum v. Fano, 427 U.S. 215, 224-25, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976); Jackson v. Cain, 864 F.2d 1235, 1250 (5th Cir. 1989).

Kuykendall also complains of searches of his papers out of his presence and without probable cause. However, the Fourth Amendment's proscription of unreasonable seizures does not apply to prison officers who are seizing items from the cells of prisoners. See Hudson v. Palmer, 468 U.S. 517, 528 n.8, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984).

As Kuykendall has not demonstrated either irreparable injury or the likelihood of success on the merits, the district court did not abuse its discretion by denying his motion for a preliminary injunction.

Staff counsel also notes that Kuykendall's brief contains arguments related to claims he raised in his proposed amended complaint. That complaint is not part of the record on appeal and was not considered by the district court when it denied Kuykendall's motion. Therefore these claims are not properly before this court.

AFFIRMED.