IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Summary Calendar

No. 92-2373

DAVID RUIZ, ET AL.,

Plaintiffs

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

JAMES COLLINS, Director,
Texas Department of Criminal Justice,
Institutional Division,

Defendant-Appellee,

v.

JEFFREY BALAWAJDER,

Movant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 78 987)

December 23, 1992

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

---

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Jeffrey Balawajder, an inmate incarcerated in the Ellis One Unit of the Texas Department of Criminal Justice, Institutional Division (TDCJ-ID), moved to intervene as a matter of right in the Ruiz litigation, a class action pending since the early 1970s that was filed on behalf of all inmates incarcerated in the TDCJ-ID. See Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980), aff'd in part and vacated in part, 679 F.2d 1115, amended in part and vacated in part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983). The district court, per Justice, J., denied Balawajder's motion and this appeal ensued.

Federal Rule of Civil Procedure 24(a)(2) allows intervention as a matter of right upon meeting four conditions: (i) the applicant must file a timely motion to intervene; (ii) the applicant must claim "an interest relating to the property or transaction which is the subject of the action"; (iii) the applicant must be "so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest"; and (iv) "the applicant's interest is [not] adequately represented by existing parties." See Woolen v. Surtran Taxicabs, Inc., 684 F.2d 324, 333 (5th Cir. 1982).

In his pro se motion to intervene, Balawajder made various attacks on the prison administration and sought a temporary restraining order to prevent the TDCJ-ID director from permitting deprivation or destruction of his "(1) legal or religious property; (2) legal writings and postal supplies; (3) typewriter;

(4) hygiene supplies and personal clothing; and (5) other non-dangerous items heretofore allowed . . . ." Balawajder contended that he could intervene as a matter of right because his interest was related to the subject matter of the Ruiz case and his ability to protect that interest was impaired by inadequate representation of his interest by existing parties. Balawajder further contended that class representatives had not "diligently and adequately enforced the Injunctions, Orders [and] Stipulations" entered previously by the district court. He supported that claim by reference to approximately 1000 other such motions to intervene by inmates.[2]

The district court denied Balawajder's motion to intervene, ruling that "[e]xperienced and highly competent counsel have been appointed by the court to represent the plaintiff class, and the management and conduct of the plaintiffs' class action has been committed to such counsel." The court declared that it had confidence that such counsel would take appropriate action, if any, sufficient to address such claims. The district court further observed that since there were more than 60,000 members

---

[2] Balawajder supplemented his brief in support of his motion with a detailed complaint arguing that because the prison had failed to provide him a complete library of Hare Krishna devotional materials, it could not then apply a prison rule to limit or reduce those materials within his cell without (i) causing "immediate and irreparable injury to his First Amendment religious liberty"; (ii) violating his due process rights; and (iii) applying the prison rule in violation of the ex post facto clause. Balawajder then renewed his attack on the class counsel's failure to represent and pursue various interests of the members of the class ranging from appeal of disciplinary actions to adequate representation of illiterate inmates.

of the class, allowing *individual* class members such as Balawajder to "control the case ... would inevitably [cause] such mass confusion that no effective action of any kind would be possible." The district court declared that for relief pursuant to Ruiz, only class counsel were entitled to move for a temporary restraining order which impacted the entire class. Accordingly, the district court ordered copies of Balawajder's motions to be forwarded to class counsel.

For purposes of appeal, we need only address Balawajder's contention that he may intervene as a matter of right because class counsel has not adequately represented his claims relating to the Ruiz case, as that issue is dispositive. Balawajder alleges that class counsel has inadequately represented Balawajder individually or the inmate class generally in numerous ways: (i) class counsel's failure to litigate issues adequately and diligently and to enforce the district court's decrees and injunctions; (ii) class counsel's failure to make all the arguments Balawajder could make; (iii) antagonism or conflict between class counsel and Balawajder; (iv) class counsel's lack of diligent representation of illiterate inmates; and (v) collusion between class counsel and TDCJ-ID, which allegedly involved the payment of high attorney's fees in exchange for class counsel's non-enforcement of orders for relief.

Balawajder's first claim -- generally attacking class counsel's competence -- lacks merit. Balawajder provides no proof besides conclusory statements. Balawajder claims to offer

proof by pointing to the high number of intervention claims filed by other inmates, supposedly evincing a "chronic problem of inadequate representation" by class counsel. More than this is needed to support his allegations. We likewise reject Balawajder's contentions that class counsel is inadequate in view of antagonism between Balawajder and counsel and counsel's alleged collusion with prison officials in exchange for large attorney's fees. Again, Balawajder makes nothing but bare allegations.

We further reject Balawajder's contention that class counsel is inadequate because it will not make all the arguments Balawajder would make if he had his druthers. Balawajder is simply attempting to force his own agenda on counsel representing the class. Channeling complaints through class counsel is the process by which the issues may be consolidated and relief most effectively provided. The district court declared that "mass confusion" and "no effective action" would result if thousands of interveners were each allowed to control the litigation.

Finally, we reject Balawajder's argument that class counsel's inadequate representation has deprived illiterate inmates of access to the courts. We recognize that inmates are guaranteed access to the courts by the Constitution and that such access must be effective, adequate and meaningful. See Bounds v. Smith, 430 U.S. 817, 821-23, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). The district court ordered this and other class claims raised by Balawajder to be channeled through class counsel. Balawajder

has not shown how, under the circumstances, illiterate inmates have been denied access to the courts. This claim, therefore, lacks merit.

In sum, Balawajder has failed to show a basis for intervention as a matter of right. Therefore, the district court's denial of intervention was not appealable absent an abuse of discretion. See Surtran Taxicabs, 684 F.2d at 330-31. We find no such abuse of discretion.[3] Accordingly, we AFFIRM the district court's dismissal of Balawajder's motion to intervene.

---

[3] During the pendency of this appeal, it has come to this court's attention that the underlying Ruiz litigation has been settled. Although we have not yet been apprised of the details of the settlement -- and thus cannot determine how it affects this case -- it may be that Balawajder's appeal is rendered moot. See DeFunis v. Odegaard, 416 U.S. 312 (1974); Nationwide Mutual Insurance Co. v. Burke, 897 F.2d 734 (4th Cir. 1990).