IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-2549
Summary Calendar

WILLIAM HOBART HILL, II,

Plaintiff-Appellant,

VERSUS

DR. BARKSDALE,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-92-1703)

(March 1, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

William Hill appeals the dismissal, pursuant to 28 U.S.C. § 1983, of his state prisoner's civil rights action brought pursuant to 28 U.S.C. § 1983. We dismiss the appeal as frivolous.

I.

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 Pursuant to that rule, the court has determined that this opinion should not be published.

Hill, a Texas prison inmate and mental patient, filed a pro se and in forma pauperis ("IFP") suit against a prison psychologist for ordering that Hill be placed on "tag" status, i.e., cell restriction, for two and one-half days. According to Hill's complaint, he was so confined because he failed to attend a group therapy session. Hill alleges that he was never informed of the meeting and complains that homosexuals were allowed to serve him food during that time.

Without holding a Spears[1] hearing or further developing the claims, the district court dismissed the action as frivolous pursuant to section 1915(d). Noting that Hill had filed numerous frivolous lawsuits in the past, the court assessed a $75 sanction and ordered that Hill not be allowed to file further IFP appeals until the sanction is paid.

II.

Before reaching the merits of Hill's case, we must examine the basis of our jurisdiction, on our own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). The district court entered final judgment on June 30, 1992. On July 6, Hill filed both a motion to reconsider the judgment and a notice of appeal. The court denied the court on August 4. Because the defendant was never served and Hill's motion was served within ten days after entry of judgment, the motion is treated as a timely Fed. R. Civ. P. 59(e) motion. Craig v. Lynaugh, 846 F.2d 11, 13 (5th Cir.

[1] Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

1988). Hill's July 6 notice of appeal thus is nullified under Fed. R. App. P. 4(a)(4).

However, as Hill's appellate brief was filed on August 31, within thirty days of entry of the order denying his motion for reconsideration, it may be construed as a timely notice of appeal if it satisfies the requirements of Fed. R. App. P. 3. See Smith v. Barry, 112 S. Ct. 678, 682. It is the notice afforded by the document, not the litigant's motivation in filing it, that determines the document's sufficiency as a notice of appeal. Id. Rule 3(c) is the only part of rule 3 that sets requirements for IFP appellants. Hill's brief conveys the information required by rule 3(c): Notices "shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken." Thus, under a policy of liberal construction of notices of appeal, Hill's filing styled as a brief is appropriately treated as a notice of appeal.

III.

In general, a district court may dismiss an IFP complaint as frivolous if it lacks an arguable basis in law or fact. Neitzke v. Williams, 490 U.S. 319, 328 (1989). See Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992). We review a section 1915(d) dismissal under the abuse-of-discretion standard. Id. at 1734. Because the district court did not conduct a Spears hearing or afford Hill any other opportunity to amend his pleadings, however, the dismissal is

premature if the complaint, viewed in its most favorable light with all its allegations accepted as true, states a colorable claim. Foulds v. Corley, 833 F.2d 52, 53-55 (5th Cir. 1987).

Hill's pro se brief is difficult to decipher. According it liberal construction, Hill appears to raise a due process challenge to being placed on cell restriction. He alleges that Dr. Barksdale placed him on cell restriction for two and one-half days because he had failed to attend a group therapy meeting. Hill further asserts that when he explained to a prison official that he had not known about the meeting, the official "said there was nothing he could do." According to Hill, the prison door was then closed, and he was not given any further opportunity to respond to the disciplinary action taken against him.

"The level of process due a prisoner depends in part on the severity of the sanction to be imposed and the needs of the institution." Cooper v. Sheriff, Lubbock County, Tex., 929 F.2d 1078, 1083 (5th Cir. 1991) (per curiam). For the type of punishment imposed in this case, due process required only that Hill receive "some notice of the charges against him" and an "opportunity to present his views" in an "informal, nonadversary evidentiary review." See Hewitt v. Helms, 459 U.S. 460, 476 (1983).

Although Hill is in a facility for psychiatric patients, he is also an inmate. Even if, arguendo, his assertion that he was not given the opportunity to make a statement on his minor disciplinary offense before the discipline was imposed states a colorable procedural due process challenge, he can show no damage, as the

discipline imposed was trivial. Thus, as the district court held, Hill's "claims have no realistic chance of ultimate success and no arguable basis in law and fact." (Citing Push v. Parish of St. Tammany, 875 F.2d 436, 438 (5th Cir. 1989). The dismissal was entirely proper.

IV.

The district court imposed a sanction of $75 and forbade Hill from filing further IFP actions, citing the fact that "Hill has filed thirty eight civil rights cases in this district, fifteen of which have been dismissed as frivolous." We cannot conclude that the court abused its discretion in imposing this sanction.

V.

The appeal is frivolous. It is hereby DISMISSED pursuant to Fifth Cir. Loc. R. 42.2. Hill is sanctioned $25, which is to be added to the $75 already imposed. Hill is warned that the court will impose more severe sanctions for any further frivolous filings. See Fed. R. App. P. 38.