

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2763
Conference Calendar

ARTHUR W. PITSONBARGER, JR.,

Plaintiff-Appellant,

versus

MICHAEL W. COUNTZ, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA H 92-2289
- - - - -
March 16, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Arthur Pitsonbarger, Jr., an inmate of the Texas Department of Criminal Justice, Institutional Division, appeals the dismissal of his civil rights action against Warden Michael W. Countz and Assistant Wardens R. Ott and R. Pustka of the division's Ellis II Unit. We affirm.

Pitsonbarger's complaint alleged that on January 10, 1992, at 9:30 a.m., he and fellow inmates Mark White and Henry Black entered a recreational room used by inmates in prehearing detention or who are between solitary-confinement terms.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Pitsonbarger and White argued, whereupon Pitsonbarger struck White in the stomach and face. Pitsonbarger and Black then drew knives; they held White hostage as Pitsonbarger demanded to speak with the wardens.

After Pitsonbarger and Black spoke with Assistant Wardens Ott and Pustka, the two inmates surrendered their knives. Pitsonbarger and Black were handcuffed and strip-searched. Ott and Pustka ordered the cells of both inmates to be stripped of all removable articles and that they be placed in their cells naked. This was done. Pitsonbarger has not alleged that he was uncomfortable because of the temperature in his cell.

At 9:00 p.m. the same day, Pitsonbarger alleged, two other officers came to his cell and brought him a pair of undershorts, a mattress, two blankets, and a pillow. The next morning at about 7:45 a.m., another officer came to Pitsonbarger's cell and returned all of his clothing and the articles which had been removed during the previous morning. Pitsonbarger seeks monetary damages on grounds that he was placed in his stripped cell without notice or a prior hearing.

The district court dismissed the action as frivolous on authority of 28 U.S.C. § 1915(d), finding that the defendant officials' actions were reasonably related to the legitimate interests of isolation, inventory, and security. Section 1915(d) authorizes a district court to dismiss a *forma pauperis* civil action if "the claim has no arguable basis in law and fact." Pugh v. Parish of St. Tammany, 875 F.2d 436, 438 (5th Cir. 1989). This Court reviews such dismissals for abuse of discretion rather

than de novo. Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1734, 118 L.Ed.2d 340 (1992).

Confinement of a prison inmate "to administrative segregation pending completion of the investigation of the disciplinary charges against him is not based on an inquiry requiring any elaborate procedural safeguards." Hewitt v. Helms, 459 U.S. 460, 475, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983). The Court held that Helms "received all the process that was due" when he received notice of the disciplinary charges against him the day after he was placed in administrative segregation and when, four days after that, a committee reviewed the evidence and determined that he should remain so confined. 459 U.S. at 464, 477.

Pitsonbarger remained in intensified administrative segregation for less than 24 hours. His brief detention in his stripped cell, even though without clothing, did not violate his right to due process, considering the facts of the incident which led to it. Because Pitsonbarger admittedly used a knife to threaten the other inmate and hold him hostage, the authorities were justified in confining Pitsonbarger in a stripped cell until they could thoroughly search his other possessions for weapons. This treatment of him was permissible because it was reasonably related to the legitimate penological interest in restoring and maintaining internal security of the institution. See Hudson v. Palmer, 468 U.S. 517, 526-27, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984). Because the district court did not abuse its discretion by dismissing the action, its judgment is AFFIRMED.