

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2888
(Summary Calendar)

JAMES W. PERKINS,

Plaintiff-Appellant,

versus

M. STONE,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Texas

(CA H-92-2842)

April 30, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant James W. Perkins complains on appeal that his civil rights complaint should not have been dismissed as frivolous by the district court. Finding that, even under a relaxed pleading standard, Perkins failed to allege particular

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

facts with sufficient specificity to show denial of a constitutional right, we affirm.

I

FACTS AND PROCEEDINGS

Perkins, a Texas Department of Criminal Justice (TDCJ) inmate, filed a pro se suit under 42 U.S.C. § 1983 alleging that his constitutional rights were violated when he was wrongly accused of a disciplinary infraction. In his complaint Perkins stated that, because of a back problem, he was taken to the prison infirmary on August 18, 1992, where he received medication and a "lay-in" pass for two days. Defendant-Appellee guard Stone, however, wrote a disciplinary report charging that Perkins refused to attend a vocational training class on August 18, "without a legitimate reason." On August 29, a disciplinary hearing was conducted and Perkins was found not guilty of the charge.

The district court granted Perkins leave to proceed in forma pauperis (IFP) and dismissed his complaint as frivolous.

II

ANALYSIS

An IFP complaint may be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint is frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, ____ U.S. ____, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). Dismissal may be premature, however, if the complaint raises a colorable claim that could be "fleshed out" consistent with this court's holding in Spears v. McCotter, 766 F.2d 179

(5th Cir. 1985). Foulds v. Corley, 833 F.2d 52, 54 (5th Cir. 1987). Although the district court did not give Perkins an opportunity to develop his claim under Spears, Perkins nonetheless fails to demonstrate that the dismissal was premature.

The federal courts have a narrow role in the review of prison disciplinary proceedings. Stewart v. Thigpen, 730 F.2d 1002, 1005 (5th Cir. 1984). Procedural due process requires that a prisoner be provided with notice of the charges and an opportunity to be heard. Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Perkins' complaint and attachments indicate that the disciplinary proceedings were procedurally adequate and that he was found not guilty of the disciplinary charge against him.

To the extent that Perkins alleges that a false disciplinary charge was brought simply for harassment, he presents no specific facts in support of his claim. Rather, he asks the courts to investigate why the false charge was made. That is not the role of the federal courts. A plaintiff in a § 1983 action must state facts in reasonable detail and specificity and not merely allege conclusions. Morrison v. City of Baton Rouge, 761 F.2d 242, 244 (5th Cir. 1985).¹ As Perkins has failed to allege discrete facts

¹ In reviewing the propriety of a dismissal on the pleadings, Morrison relied on the "heightened pleading standard" of Elliot v. Perez, 751 F.2d 1472, 1479-82 (5th Cir. 1985). Morrison, 761 F.2d at 244-46. In light of the Supreme Court's recent decision in Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, ___ U.S. ___, 113 S.Ct. 1160, 1163 (1993), to limit application of the heightened scrutiny standard, it is unclear whether Elliot remains good law in cases involving the qualified immunity of individual defendants. But even with a fully

sufficient to demonstrate any violations of his constitutional rights by the defendant, the district court committed no reversible error in dismissing the complaint as frivolous.

AFFIRMED.

relaxed pleading standard Perkins has failed to meet muster.