

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-4827  
Summary Calendar

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MICHAEL RAY WEST,

Plaintiff-Appellant,

VERSUS

J. COCKRELL, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(6:92 CV 236)

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(March 17, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:<sup>1</sup>

Michael Ray West appeals the dismissal of his § 1983 lawsuit as frivolous under § 1915(d). Because we find that West's claim has an arguable basis in fact and in law, we vacate and remand for further proceedings.

I.

Michael Ray West, proceeding **pro se** and **in forma pauperis** filed this civil rights lawsuit under 42 U.S.C. § 1983 against the warden of Beto I Unit in the Texas Department of Criminal Justice (TDCJ). He alleged that from July 3 through August 7, 1991, he was repeatedly beaten by several inmates. He alleged that he notified the authorities and personally spoke with the warden

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<sup>1</sup>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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

about this problem and that the warden refused to transfer or move him into safekeeping. He further alleged that he has been punished through loss of class and "good time" for his refusal to return to general population. He sought \$10,000 in damages and a transfer from Beto I Unit.

In his first amended complaint, West added H.E. Kinker, Unidentified Plaintiff, Lt. Brooks, Major Jeffcoat, and Mrs. Belt as defendants and made more specific factual allegations to support his claim. He alleged that in September 1991 he began receiving death threats and was assaulted by other inmates. He wrote a statement to his correctional counselor, Mrs. Belt, about the threats, giving the names of the inmates involved. Shortly thereafter, Sgt. Anderson came to his cell, questioned him about the threats on his life, and told West he would investigate.

He contends that both Belt and Anderson concluded after investigation that he needed to be transferred or placed in safekeeping, but their recommendations were denied by the Unit Classification Committee (UCC). West stated that on October 15, 1991, he received a major disciplinary case for refusing to go to general population and was placed in solitary.

West alleged that on October 16, he filed a grievance with Warden Cockrell challenging the denial of his requests and her refusal to take any action to protect him. His appeals to Regional Director M.W. Moore and Deputy Director W. Scott were denied.

West drafted another complaint in December, stating that while he was in solitary, inmates Anderson, Washington, and King continued to threaten that they would harm him when he returned to general population. According to West, Lt. Brooks contacted West in January 1992 concerning an investigation of his allegations. Brooks cursed West out, accusing him of making up the story in order to be transferred. West alleged that Brooks never initiated an investigation, and, as a result, the UCC denied a transfer on January 31.

West stated that he filed a grievance with Cockrell and appeals to the regional and deputy directors, which were all denied. He alleged that he also personally discussed this matter with Wardens Kinker and Cockrell, who refused to take any action.

West alleged that he has been forced to remain in solitary confinement for almost a year to

insure his safety. He contends that the defendants have refused to take precautions to protect his life and safety and that they are trying to force him to return to general population, despite his complaints. He alleged that defendants' actions violated his Eighth Amendment right to be free from cruel and unusual punishment. His prayer for relief requested compensatory and punitive damages in the amount of \$10,000 each and a preliminary injunction for transfer or placement in safekeeping. West also filed a separate motion for preliminary injunction.

Magistrate Judge Guthrie held a **Spears**<sup>2</sup> hearing at which the parties consented to have the case tried by a magistrate judge. West testified that he was placed in close custody and was subjected to several beatings which the prison officers overlooked. West testified to the allegations contained in his first amended complaint.

Warden Crow then testified that he had reviewed West's classification file and found that West could not identify any specific enemy or a reason for his fear of returning to general population. West testified that he gave a statement listing the names of inmates who assaulted him. Crow testified that West did not have any problems when he was in minimum custody and that his problems began when he was reduced to close custody through the disciplinary process. West testified that he lost all of his class and good time because he had no other choice but to keep himself locked up in solitary to protect himself. Crow testified that the classification committee denied his request for safekeeping or transfer because they felt he had an escape history and that he was trying to manipulate the system. West denied that he had tried to escape.

The district court dismissed West's action as frivolous under 28 U.S.C. § 1915(d). The court found that West's complaint simply challenged his classification and held that West had not shown that his present classification constituted deliberate indifference to his safety. The court concluded that West's claim was without an arguable basis in fact or law and had little or no realistic chance of ultimate success on the merits.

## II.

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<sup>2</sup> **Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985).

A § 1915(d) dismissal is reviewed for abuse of discretion. **Denton v. Hernandez**, 112 S.Ct. 1728, 1734 (1992). A district court may dismiss an **in forma pauperis** complaint if it is frivolous, that is, if it lacks an arguable basis either in law or in fact. **Id.** at 1733.

In determining whether a district court has abused its discretion in dismissing a case under § 1915(d), an appellate court should consider, among other factors, whether "the court inappropriately resolved genuine issues of disputed fact." **Moore v. Mabus**, 976 F.2d 268, 270 (5th Cir. 1992). Also, the magistrate judge is not allowed to make more than limited credibility determinations at a **Spears** hearing. See **Wilson v. Barrientos**, 926 F.2d 480, 482-83 (5th Cir.), **recalled in part on other grounds on reh'g**, 926 F.2d 483 (5th Cir. 1991). The district court, however, found that adequate evidence existed to justify West's present placement in close custody rather than safekeeping. This finding required the court to go beyond a limited credibility determination and to resolve genuine issues of disputed fact against West.

The district court characterized West's claims as nothing more than a disagreement with his classification. The court cited **Mikeska v. Collins**, 900 F.2d 833, 836 (5th Cir. 1990), **opinion withdrawn and superseded on reh'g**, 928 F.2d 126 (5th Cir. 1991) for the proposition that the classification of inmates is a matter with which courts are reluctant to interfere. His allegations, however, establish much more than a mere disagreement with his classification. He alleges that the defendants refused to change his classification in the face of evidence that his current classification posed a risk to his safety.

The Eighth Amendment provides prisoners protection against injury at the hands of other inmates. **Johnston v. Lucas**, 786 F.2d 1254, 1259 (5th Cir. 1986). In order to establish liability under the Eighth Amendment for denial of protection against harm from other inmates, the prisoner must show deliberate indifference by prison officials. **Id.** at 1260. A failure to classify an inmate adequately can be a violation of the Eighth Amendment's prohibition against cruel and unusual punishment. **Pembroke v. Wood County, Texas**, No. 92-4079, 92-4250, slip op. at 1886 (5th Cir. Jan. 20, 1993). West's allegations that he was beaten repeatedly for a month while

prison officials who were aware of the beatings and his complaints stood by and did nothing are sufficient to state a claim of deliberate indifference. This claim has an arguable basis in fact and in law. The district court ignored these factual allegations in its memorandum opinion and order of dismissal.

Because we find that the district court abused its discretion in dismissing West's complaint as frivolous under § 1915(d), the district court's judgment should be vacated and this case remanded with instructions to the district court to order service of the complaint, an answer by defendants, and further proceedings as necessary.

VACATED and REMANDED.