

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4921

Summary Calendar

CARL WILLIAMS,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director
Dept. of Criminal Justice,
Institutional Division, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
CA 6 92 202

March 18, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Prisoner appeals the dismissal of his pro se and in forma pauperis § 1983 suit as frivolous under 28 U.S.C. § 1915(d). We affirm in part and vacate and remand in part.

I.

A.

Texas prisoner Carl Williams, proceeding pro se and seeking in forma pauperis status, filed a civil rights suit against 26 Texas

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

prison officials. The magistrate judge held a hearing pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). At the Spears hearing, Williams explained the following allegations made in his complaint.

In a conspiracy to murder him, prison officials are pumping toxic gas through the vents in William's administratively segregated cell, causing him brain damage. To his knowledge, gas is not being pumped into anyone else's cell. Williams believes that the warden and other corrections officers have participated in, or have knowledge of, the poisoning.

Before bringing Williams his food, officers have occasionally taken his tray to the cell of a certain prisoner infected with the AIDS virus. The infected prisoner spits on his food, and then the officers take the tray to Williams. Additionally, Williams purchases peanut butter at the commissary to avoid infection. He says two of these jars were tampered with; they contained bubbles and the sealed tops were loose.

Without William's knowledge, an officer stabbed him in the arm. He did not notice any blood until later. Williams believes that the officer injected him with some type of virus. A prison doctor testified that Williams was examined after he complained of the stabbing. Some redness was found around his wrist, but no lacerations. The doctor said that Williams has resisted psychiatric and psychological examination. Williams responded that prison officials sent him to see a psychologist only to cover up their own misdeeds.

Williams sent a certified letter to his sister, asking her to retain counsel to help him. The return receipt came back with his sister's signature forged.

As the magistrate judge was concluding the Spears hearing, Williams told her he had several more allegations. The magistrate, however, concluded the hearing without considering these allegations.

B.

Williams made the following allegations in his complaint that were not addressed at the Spears hearing. Prison officials intentionally housed him with his enemies. A violent inmate in a nearby cell makes loud noises that seriously injure Williams and threaten his life. An inmate shot Williams with a "zip gun." He was taken to a punishment cell, which contained inmates that have the AIDS virus, in violation of his due process rights.

An inmate lent Williams a sewing needle to repair his tennis shoes. Williams alleges this inmate conspired with prison officials to give him a needle infected with the AIDS virus. Williams accidentally stuck himself with the needle. He has also been given infected clothing and sheets.

While Williams is asleep, prison employees put a device on his chest. He thinks it causes heart attacks.

Prison officials are interfering with his legal and personal mail and have refused him access to law books. He also claims that prison officials have blocked his attempts to send letters to the news media. Williams was refused a shower and meals for two days.

Medical personnel diagnosed a malady of his without examining him. He also alleges that he has been denied adequate medical treatment for a skin condition. Furthermore, the Inmate Trust Fund overcharged him for supplies, and officers refused to grant him a "90 day" hearing. Finally, Williams makes an unclear allegation that his rights under an interstate parole compact plan are being denied.

The magistrate judge recommended that the suit be dismissed under 28 U.S.C. § 1915(d) as frivolous and that the IFP status be denied. Williams moved to amend his complaint to add more defendants. The magistrate denied the motion for failure to submit the proposed amendment. Williams objected to the magistrate's report. The district court adopted the magistrate judge's findings and conclusions and dismissed the suit. This appeal followed.

II.

A.

The magistrate judge addressed the claims about toxic gas, food tainted with the AIDS virus, contaminated peanut butter, the tainted sewing needle, the device that officials put on his chest at night, the stabbing, and the sister's forged signature. We affirm the dismissal of all claims based on these allegations.

An IFP complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992). A delusional, irrational, fantastic, or wholly incredible claim may be factually frivolous. Allegations that are merely unlikely, however, are not factually frivolous. Id. The

standard of review is abuse of discretion. Id. at 1734. We find that the district court did not abuse its discretion in adopting the magistrate's determination that these allegations are "irrational and fanciful."

B.

We also affirm the dismissal of some of the claims not specifically addressed by the district court. Williams has not stated a constitutional violation with regard to the occasional denial of meals and showers. See Green v. Ferrell, 801 F.2d 765, 771 & n.5 (5th Cir. 1986) (meals); Smith v. McCleod, 946 F.2d 417, 418 (5th Cir. 1991) (showers). Furthermore, the Constitution does not protect Williams from being placed in a cell with his "enemies." These claims are legally frivolous. See Nietzke v. Williams, 109 S.Ct. 1827, 1833 (1989).

C.

As to the other allegations not considered by the magistrate and district court, we must vacate and remand. If Williams was punished for the "zip gun" incident without due process, the claim might not be frivolous. See Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974). Interference with legal mail could also be a serious claim. Id. at 574-77. Depending on the claim, interference with non-legal mail, including his complaints that he is denied contact with news media and that he is overcharged for postage and supplies, may be a constitutional violation. See Guajardo v Estelle, 580 F.2d 748, 753-63 (5th Cir. 1978). Denial of access to law books could be a non-frivolous claim. See Bounds v. Smith, 430

U.S. 817 , 828 (1977). If prison officials were deliberately indifferent to his serious medical needs, he might have a meritorious claim. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). If, by alleging that he has been denied a "90-day" hearing, Williams means that his administrative segregation status has not been reviewed periodically, he could have a non-frivolous claim. Hewitt v. Helms, 459 U.S. 460, 477 n.9 (1983). William's reference to interference with an interstate compact release plan is unclear. If it refers to his release, it might have to be brought first in a habeas action. See Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117-19 (5th Cir. 1987). We remand for the district court to consider these claims.

AFFIRMED in part; VACATED AND REMANDED in part.