

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8256  
Summary Calendar

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KAAZIM ABUL UMAR, a/k/a  
Wesley L. Pittman,

Plaintiff-Appellant,

versus

REBECKA BURKETT, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Western District of Texas  
(W-91-CV-292)

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(June 15, 1993)

Before POLITZ, Chief Judge, JOLLY and EMILIO M. GARZA, Circuit  
Judges.

POLITZ, Chief Judge:\*

Kaazim Abul Umar, a.k.a. Wesley L. Pittman, proceeding **pro se**  
and **in forma pauperis**, appeals dismissal of his civil rights suit  
as frivolous. We affirm in part, vacate in part and remand for  
further proceedings consistent with this opinion.

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\*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that this opinion should not be published.

### Background

This 42 U.S.C. § 1983 action is one of at least eight federal lawsuits initiated by Umar during his incarceration at the Hughes Unit of the Texas Department of Criminal Justice between February 1990 and December 1991.<sup>1</sup> After a **Spears**<sup>2</sup> hearing, the magistrate judge in a careful and thorough report recommended dismissal under 28 U.S.C. § 1915(d). The district court adopted the recommendation and dismissed the suit. This appeal timely followed.<sup>3</sup>

### Analysis

An **in forma pauperis** complaint may be summarily dismissed under 28 U.S.C. § 1915(d) if it "lacks an arguable basis either in law or in fact,"<sup>4</sup> that is, if it is "based on an indisputably meritless legal theory"<sup>5</sup> or alleges facts that "rise to the level of the irrational or the wholly incredible."<sup>6</sup> We review section

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<sup>1</sup>Umar was transferred to the Coffield Unit of TDCJ.

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

<sup>3</sup>Umar also moved for **in forma pauperis** status on appeal and for a copy of the transcript of his **Spears** hearing at government expense. The former is granted; the latter is denied as moot.

<sup>4</sup>**Neitzke v. Williams**, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed. 2d 338 (1989).

<sup>5</sup>**Id.**, 490 U.S. at 327.

<sup>6</sup>**Moore v. Mabus**, 976 F.2d 268, 270 (5th Cir. 1992), quoting **Denton v. Hernandez**, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733, 118 L.Ed. 2d 340, 350 (1992).

1915(d) dismissals for abuse of discretion.<sup>7</sup>

1. Denial of access to the courts and retaliation.

Umar alleges that he was denied access to the courts by defendants' refusal to provide adequate stationary supplies. He admits, however, to receiving 1,700 to 1,800 sheets of paper, 70 to 80 sheets of carbon paper and 200 to 300 envelopes during his 22-month stay at the Hughes Unit. Although denying receipt of the substantially larger quantity of supplies reflected by prison records, Umar does not dispute that he received many more supplies than those afforded by TDCJ's general guidelines. Moreover, he admitted that supplies were withheld on occasion because he refused to sign for them. Umar has pointed to only one instance in which a "shortage" of supplies allegedly hampered his ability to prosecute any of his numerous lawsuits: his appeal of a magistrate judge's order denying copies of certain state court documents was untimely. In that instance, however, the district court gave him an opportunity to explain the delay.<sup>8</sup> The right of access to the courts does not guarantee an infinite quantity of supplies on demand. This complaint manifestly is lacking in merit.

Umar also complains that certain of the defendants confiscated legal papers consisting of an appellate brief to this court in a habeas proceeding, together with supporting documents and affidavits. Umar, however, did not state an injury, a necessary

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<sup>7</sup>**Id.**

<sup>8</sup>**Cf. Mann v. Smith**, 796 F.2d 79 (5th Cir. 1986).

element of a denial-of-access claim.<sup>9</sup> We accepted a carbon copy of his brief. As to the other papers, if they were introduced in the district court, copies could have been obtained from that court. If they were not so filed, they would be inadmissible on appeal.

Finally, Umar claims that certain defendants refused to mail 18 pieces of mail, resulting in the dismissal of his habeas petition. At his **Spears** hearing, it became apparent that the root of Umar's complaint was a rule that mail would not be sent out without an inmate's signature. That rule does not deny access to the courts. Even if it results in delay when the inmate temporarily leaves the unit, the rule nonetheless is valid because it is reasonably related to legitimate penological interests in accounting for use of postage and in memorializing inmate authorization to send legal documents.<sup>10</sup> Again, Umar fails to assert a viable claim. His claims for denial of access to the courts were properly dismissed.

## 2. Retaliation.

Umar contends that he was penalized in retaliation for his filing of administrative grievances and other lawsuits. He has not alleged, however, any facts indicating a causal connection between the exercise of his legal rights and the asserted adverse actions.

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<sup>9</sup>**Id.**

<sup>10</sup>See **Henthorn v. Swinson**, 955 F.2d 351 (5th Cir.), cert. denied, 112 S.Ct. 2974 (1992).

Time sequence, although ordinarily probative,<sup>11</sup> does not avail him. He began filing grievances as soon as he arrived at the Hughes unit. In one instance Umar contends that Sergeant Roy Glover filed a false disciplinary charge against him in retaliation for a grievance that Umar had filed against Glover. Unrefuted prison records show, however, that Glover filed the disciplinary charge on December 7, 1990, four days **before** Umar filed his grievance.

We must consider whether factually frivolous pleadings could be remedied by an amended complaint before affirming a section 1915(d) dismissal.<sup>12</sup> The magistrate judge pressed Umar at the **Spears** hearing to specify facts supporting a causal connection. Umar was unable to do so. The district court properly dismissed the claim.

### 3. Disciplinary Hearing.

Umar alleges that he was denied procedural due process in the disciplinary proceeding adjudicating Sergeant Glover's aforementioned charge. None of Umar's allegations even arguably rises to the level of a due process violation except one: that Glover remained with the unit disciplinary captain while the captain decided the case but Umar was required to withdraw. This allegation suggests that Umar was not afforded an impartial

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<sup>11</sup>**Shirley v. Chrysler First, Inc.**, 970 F.2d 39 (5th Cir. 1992).

<sup>12</sup>**Hernandez**, supra; **Moore**, supra.

decisionmaker, a fundamental requisite of due process.<sup>13</sup> The district court erred in summarily dismissing this claim.

4. Cold food with trash.

Our precedents teach that Umar's complaint that he was served cold food does not state a constitutional deprivation.<sup>14</sup> He also alleges, however, that he was served food containing plastic, wood and trash. Umar does not allege facts suggesting deliberate indifference, an essential requirement for a complaint about prison conditions.<sup>15</sup> The magistrate judge, however, did not alert Umar to this deficiency or give him an opportunity to remedy it.<sup>16</sup> This aspect of the complaint should not have been dismissed under section 1915(d).

5. Shaving policy.

Umar's challenge to prison policy concerning issuance of clipper shave passes for inmates with pseudofolliculitis barbae is foreclosed by our decision in **Thompson v. Garner**.<sup>17</sup>

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<sup>13</sup>See **Wolff v. McDonnell**, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed. 2d 935 (1974).

<sup>14</sup>**Scrivner v. Mississippi Dept. of Corrections**, No. 91-7204 (5th Cir. Oct. 9, 1992) (unpublished); **Sparks v. Murphy**, No. 92-4125 (5th Cir. Apr. 22, 1992) (unpublished).

<sup>15</sup>**Wilson v. Seiter**, \_\_\_ U.S. \_\_\_, 111 S.Ct. 2321, 115 L.Ed. 2d 271 (1991).

<sup>16</sup>See **Moore**, supra.

<sup>17</sup>No. 91-8019 (5th Cir. May 25, 1992) (unpublished).

6. Attacks by other inmates.

Umar complains of two incidents in which prison officials did not protect him from attacks by other inmates. The first incident does not rise to the level of a constitutional violation because, as Umar admitted, he suffered no injury.<sup>18</sup> The second incident -- an assault on August 26, 1991 in which inmate Carl Moraza allegedly threw hot liquid in Umar's face -- should not have been dismissed as frivolous. Umar claims to have suffered prolonged impairment of his vision. He sufficiently alleged deliberate indifference on the part of prison officials in his **Spears** hearing testimony to the effect that two ranking officials stated they would not move him regardless of Moraza's threats.<sup>19</sup>

7. Medical care.

Umar complains of denial of medical care in that he was not seen by an ophthalmologist for the vision impairment that he allegedly suffered after Moraza's assault. Umar stated at his **Spears** hearing that he repeatedly requested such care and prison records reflect that he asked to see an eye doctor on September 22, 1991 and again on October 31. Nonetheless, as of January 8, 1992, the date of his **Spears** hearing, his request had not been honored. Further evidentiary development might show that Umar cannot prove either a serious injury or animus more culpable than mere negligence on the part of prison officials. This claim, however,

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<sup>18</sup>**Jackson v. Culbertson**, 984 F.2d 699 (5th Cir. 1993).

<sup>19</sup>Cf. **Johnston v. Lucas**, 786 F.2d 1254 (5th Cir. 1986).

should not have been dismissed as frivolous.

8. Supervisory liability.

Umar seeks to hold several ranking officials liable for dereliction of their supervisory responsibilities. Supervisory officials, however, cannot be held vicariously liable for the acts of their subordinates. Unless the official affirmatively participated in the acts causing the constitutional deprivation, he or she can be held liable only for implementing "unconstitutional policies that causally result in the plaintiff's injury."<sup>20</sup> Umar has not identified any such policies causally connected to his non-frivolous claims. The district court properly dismissed the claims asserting failure to supervise or correct.

9. Sanctions.

The district court sanctioned Umar under Rule 11 of the Federal Rules of Civil Procedure for filing a complaint that was not well grounded in fact or warranted by law. We agree that Umar has abused the system. We agree that certain of Umar's claims "seem to be chronicles of every event that has displeased [him] during his incarceration," asserted without regard to whether they rise to the level of constitutional deprivations. Umar was sanctioned in the amount of \$100 and prohibited from filing any more lawsuits in the Western District of Texas until the \$100 has

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<sup>20</sup>**Mouille v. City of Live Oak, Texas**, 977 F.2d 924, 929 (5th Cir. 1992), pet. for cert. filed, 61 U.S.L.W. 3732 (Apr. 12, 1993) (No. 92-1633).



been paid. That ban is to include the reconsideration of this complaint on remand.

AFFIRMED in part, VACATED in part and REMANDED for proceedings consistent with this opinion if and when the sanction amount is paid.