IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-8420
Summary Calendar

CHARLES YOUNG,

Plaintiff-Appellant,

v.

GARY SAINT et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
W 92 CA 138

March 31, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[*]

Charles Young, a state prisoner incarcerated in the Alfred Hughes Unit of the Texas Department of Criminal Justice, Institutional Division (TDCJ-ID), filed a civil rights action against various prison officials pursuant to 42 U.S.C. § 1983. A federal magistrate dismissed the complaint as frivolous pursuant to 28 U.S.C. § 1915(d). Believing it had the option to decline to entertain an intermediate appeal from the magistrate's dismissal, in view of an agreement by the parties to appeal the magistrate's order directly to the Court of Appeals, see 28 U.S.C. §

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

636(c)(3), the district court ordered Young to appeal directly to this Court. Young subsequently appealed to this court in a timely fashion. We affirm the magistrate's order dismissing Young's complaint pursuant to § 1915(d).

I.

Because this case was dismissed as frivolous following a Spears hearing conducted by the magistrate, see Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985), we must, for purposes of appellate review of the dismissal, accept all remotely plausible factual allegations in Young's complaint as well as those undisputed facts developed at the Spears hearing. However, once we accept those facts, we review the lower court's dismissal for frivolity under an abuse-of-discretion standard. See Denton v. Hernandez, 112 S. Ct. 1728, 1734 (1992); Parker v. Fort Worth Police Dept., 980 F.2d 1023, 1024 (5th Cir. 1993).

On February 17, 1992, Young, an African-American inmate, was waiting in the serving line at the prison cafeteria. A number of inmates in front of Young -- who were also African-Americans -- complained about the fitness of the chicken being served. The server, who was white, permitted at least one inmate, who was also white, to pick and choose among the pieces of chicken. That inmate was permitted to serve himself directly from the tray. When Young came to the chicken serving tray, he was told by the same server, Corrections Officer Gary Saint, that Young, too, could choose among the pieces of available chicken and serve himself. When Young reached, fork in hand, into the serving tray, Officer Saint struck Young across the hand with a metal spatula that Saint had been using to serve cornbread. Saint also used "profanity" in addressing Young, including stating "you damn inmate." No racial slurs were used. It is undisputed that a prison official serving food to inmates would violate internal TDCJ-ID policy by inflicting any type of corporeal punishment on an inmate who reaches into a serving tray, with or without authorization.

Officer Saint's blow drew an undetermined amount of blood and left two small "scratches" on Young's hand, according to undisputed prison medical records introduced at the Spears hearing.

X-rays of Young's hand contained in those undisputed prison medical records also reveal that no bones in Young's hand were fractured, although a "slight decrease in flexion and extension" of Young's fingers was noted a few days after the injury occurred.

Within fifteen to thirty minutes of the injury, Young was taken to the prison infirmary, where his hand was examined. The "scratches" were cleansed, antibiotic ointment and a band-aid were applied, and Young was returned to his cell. Young's request for prescription pain killer was denied; he was instead given an over-the-counter strength pain reliever. Despite repeated complaints about soreness in his hand, Young was forced to engage in manual labor during the following days.

II.

Young has sued a variety of prison officials in addition to Officer Saint -- including Jack Garner, Senior Warden at the Hughes Unit; James Collins, Director of TDJC-ID; Vandagriff O'Bryan and Norman Erekson, Building Captains at the Hughes Unit; and Ted Brock, a security guard at the Hughes Unit. Young also advances a variety of constitutional and statutory claims, including alleged § 1983 violations of his rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. Young also raises pendent claims under analogous provisions of the Texas Constitution.

Young's brief on appeal, however, only address the merits of the following claims: whether Young's Eighth and Fourteenth Amendment rights were violated by i) Officer Saint's conduct; ii) failure of Saint's superiors to properly train him; iii) the alleged "deliberate indifference" of other prison officials at the Hughes Unit in failing to treat Young's wounds in a timely manner; and iv) the conduct of other prison officials at the Hughes Unit in requiring Young to return to work in the days following his injury. We need not address the remainder of Young's conclusory claims. United States v. Beaumont, 972 F.2d 553, 563 (5th Cir. 1992) ("Failure of appellant to properly argue or present issues in an appellate brief renders those issues abandoned.").

The magistrate dismissed Young's entire complaint as frivolous, holding that it "lack[ed] an arguable basis in law or fact." See Neitzke v. Williams, 490 U.S. 319, 325 (1989). The

magistrate specifically held that any injury sustained by Young was a result of Officer Saint's de minimis use of force, which is not an actionable Eighth Amendment claim. See Hudson v. McMillian, 112 S. Ct. 995, 1000 (1992). The magistrate also held that Young's allegation of racial discrimination by Officer Saint and Young's claim of "deliberate indifference" by prison officials to Young's injuries were frivolous. Consequently, the magistrate reasoned, all of Young's other claims failed. Alternatively, the magistrate held that Young's entire complaint failed because it did not meet the "heightened pleading requirement" regarding qualified immunity, which was announced by this court in Elliot v. Perez, 751 F.2d 1472, 1479 (5th Cir. 1985).

Before addressing the magistrate's ruling, we must determine whether the district court erred by refusing to entertain Young's intermediate appeal from the magistrate's dismissal. The district court recognized that it had jurisdiction to hear Young's appeal, notwithstanding Young's prior written stipulation that he would appeal directly to this court, see 28 U.S.C. § 636(c)(3), because the defendants failed to object to Young's appeal to the district court; however, the district court "declined . . . the opportunity" to reach the merits and stated that "Plaintiff should file his notice of appeal with the Fifth Circuit Court of Appeals." We believe that the district erred by summarily rejecting Young's intermediate appeal. We have held that a district court has jurisdiction over a magistrate's order even though a § 636(c)(3) waiver has been signed by the appellant, so long as the appellee does not object to the intermediate appeal to the district court. See Rhome v. Sullivan, 963 F.2d 691 (5th Cir. 1992). As the district court correctly observed, the defendants in the instant case did not object to Young's intermediate appeal to the district court. Thus, the district court had no legitimate reason not to comply with it judicial duty to reach the merits of Young's intermediate appeal that was properly before it. In the interest of judicial efficiency, though, we see no need to remand to the district court for further proceedings because we agree with the magistrate that Young's complaint is frivolous.

As the Court held in Hudson, there is no actionable Eighth Amendment violation when the injuries suffered by a prisoner are the result of a de minimis use of force that is not "repugnant to

the conscience of mankind." See 112 S. Ct. at 1000. We believe that Young's injuries were the result of a de minimis use of force by Officer Saint, which was not "repugnant to the conscience of mankind." Cf. Jackson v. Culbertson, 1993 U.S. App. LEXIS 4147 (5th Cir. March 4, 1993) (prison guard's spraying prisoner with fire extinguisher de minimis use of force not repugnant). Thus, Young's claim of cruel and unusual punishment inflicted by Officer Saint is frivolous under 28 U.S.C. § 1915(d).[2]

We also agree that there is no basis in law or fact for Young's claim of race discrimination by Officer Saint. At best, Young has raised a type of disparate impact claim -- based on preferential treatment given to a single white inmate -- which is not a viable Equal Protection claim. See Washington v. Davis, 426 U.S. 229 (1976). Furthermore, we agree that the fifteen to thirty minute delay before Young's scratches were treated was not "deliberate indifference to serious medical needs" by prison officials, so as to rise to the level of an Eighth Amendment violation. See Estelle v. Gamble, 429 U.S. 97, 106 (1976).[3]

Finally, we must address Young's argument that the district court erred by failing to permit Young to amend his complaint. We note that "a pro se plaintiff . . . should be permitted to amend his pleadings when it is clear from his complaint that there is a potential ground for relief." Gallegos v. State of Louisiana, 858 F.2d 1091, 1092 (5th Cir. 1988). We review the district court's refusal to permit a pro se complainant to amend his pleadings for an abuse of discretion. See James by James v. Sadler, 909 F.2d 834, 836 (5th Cir. 1990). Because Young's lengthy

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[2] Accordingly, Young's concomitant Eighth Amendment claims regarding the alleged failure of prison officials to properly supervise Saint and prison officials' requirement that Young engage in manual labor with a slightly injured hand fail as well.

[3] We see no need to address the magistrate's alternative holding that Young's civil rights complaint did not meet the "heightened pleading requirement" regarding qualified immunity announced by this court in Elliot v. Perez, 751 F.2d at 1479; but cf. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 1993 WESTLAW 52174, 61 U.S.L.W. 4205 (U.S. March 3, 1993). Likewise, we see no need to address Young's complaints about alleged procedural irregularities that occurred during the magistrate's Spears hearing. For obvious reason, we also deny Young's request, pursuant to Rule 50(a) of the Federal Rules of Civil Procedure, that we render judgment as a matter for law in his favor on appeal.

unamended complaint and the undisputed facts developed at the Spears hearing made it clear that there was no potential merit in any of Young's claims, we believe that the district court did not abuse its discretion.

III.

For the foregoing reasons, we AFFIRM the magistrate's dismissal of Young's complaint as frivolous.