IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-8469
Summary Calendar

MICHAEL KENNEDY,

Plaintiff-Appellant,

v.

R. BURKETT, Sgt., In his individually and official capacity, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W 91 CV 244)

July 12, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Michael Kennedy, an inmate of the Texas prison system, filed a civil rights action against employees of the prison's mail room for alleged violation of his right of access to the courts. The case was referred to a magistrate judge for findings and recommendations. The magistrate judge recommended that the action be dismissed with prejudice; that a fine be imposed; and that no further civil actions be accepted from Kennedy until the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

fine is paid or lifted, or until leave to file is granted. The district court adopted the magistrate judge's recommendations and entered a judgment accordingly. Kennedy appeals the district court's judgment to this court. We affirm.

I. BACKGROUND

Michael Kennedy is an inmate in the Alfred Hughes Unit of the Texas Department of Criminal Justice, Institutional Division. The policy of the Hughes unit is to distribute to inmates on a weekly basis approximately 500 sheets of paper and postage sufficient for five one-ounce, first-class letters. Prisoners may also receive additional supplies if they establish a legitimate need. Pens and carbon paper are provided on request, as long as the inmates exchange their exhausted supplies for new ones. Records are kept of all disbursements. Those records indicate that between July 1 and October 29, 1991, Kennedy received 3,325 sheets of paper, 120 business size envelopes, 30 large, writ-sized envelopes, 13 exchanged pens, and 170 exchanged sheets of carbon paper.

Kennedy appears to have a propensity for filing lawsuits. At the time of the hearing before the magistrate judge for the case before us, Kennedy had five civil suits pending in the District Court for the Western District of Texas alone. Moreover, motions filed by Kennedy during the hearing indicate that he may also have as many as nineteen additional civil cases pending in other courts around the country.

In this particular case, Kennedy brought a civil rights action pursuant to 42 U.S.C. § 1983 against prison mail-room employees, asserting that they violated his constitutional right of access to the courts. Proceeding pro se and in forma pauperis, Kennedy alleged two injuries: first, that he was unable to submit an application for a writ of certiorari to the Supreme Court because he was denied sufficient paper; and second, that a California lawsuit was dismissed after he was allegedly denied large envelopes with which to serve the defendants with summons and complaint.

Pursuant to 28 U.S.C. § 636(b), Kennedy's case was referred to a magistrate judge for findings and recommendations. The magistrate judge found that Kennedy had "obviously faked" a document he submitted in support of his contention that his California lawsuit was dismissed because of an alleged denial of envelopes.[1]

After reviewing Kennedy's complaint, the magistrate judge concluded that Kennedy had initiated this civil rights action for the sole purpose of harassing the mail-room employees. He accordingly recommended that the district court dismiss the case with prejudice as frivolous and impose a fine of $100.00 on

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[1] Kennedy asserts that there are no facts in the record which support this finding. We disagree. The following supports the conclusion that the date on an order was changed from "July 2, 1991" to "July 29, 1991": the number "9" was penciled in after the typed number "2"; "July 29, 1991" was handwritten on the bottom of the order; and a subsequent order from the California court, dated July 17, specifically referred back to the July 2 order.

Kennedy. He recommended further that no civil actions be accepted from Kennedy until the fine is paid or lifted or until leave to file an action is granted by the district court. The district court adopted the magistrate judge's recommendations. Kennedy appeals from the district court's judgment to this court.

II. DISCUSSION

A. The dismissal of the claim with prejudice as frivolous

Kennedy contends that he did not receive enough paper to submit a proper application for a writ of certiorari to the Supreme Court. He argues further that he could not meet the August 15, 1991 deadline for service in the California lawsuit because he allegedly received no envelopes between July 29 and August 13, 1991.

Under 28 U.S.C. § 1915(d), a district court may dismiss a case brought in forma pauperis if the court is satisfied that the action is frivolous or malicious. In determining whether such a dismissal is warranted, the district court is vested with broad discretion. We review a challenge of such a dismissal for abuse of discretion. Wilson v. Lynaugh, 878 F.2d 846, 849 (5th Cir. 1989), cert. denied, 493 U.S. 969 (1989) (affirming the dismissal of a civil rights action brought by a prisoner proceeding pro se and in forma pauperis).

The record establishes that both of Kennedy's contentions of denial of access are without merit. First, the mail-room staff did not prevent Kennedy from filing a writ of certiorari with the

Supreme Court. The prison unit's records indicate that Kennedy received approximately two hundred sheets of paper per week from the mail room during the period at issue. Kennedy's own complaint asserts that "[t]he mail room has supplied paper but has not supplied envelopes." Proceeding in forma pauperis, Kennedy only needed enough paper to file one copy of a petition for a writ of certiorari. FED. R. S. CT. 39.2. Plaintiffs not proceeding in forma pauperis must file forty copies. FED. R. S. CT. 21.2(B). Kennedy alleges that he did not receive leave to file the petition in forma pauperis; that he therefore needed to file forty copies of his petition; and that he had not received sufficient paper to file forty copies. However, the record establishes that Kennedy is indigent. Therefore, if he did not receive leave to proceed in forma pauperis, it is because the Supreme Court found his application frivolous or malicious, pursuant to Rule 39.8.[2] Kennedy's claim is accordingly without merit.

We likewise reject Kennedy's argument that the mail-room staff caused the dismissal of his California lawsuit. Kennedy's only support for this allegation is a document which, according to the district court, was "patently altered."[3] We do not set

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[2] Rule 39.8 of the Rules of the Supreme Court states: "If satisfied that a petition for a writ of certiorari . . . is frivolous or malicious, the Court may deny a motion for leave to proceed in forma pauperis."

[3] The document was an order extending the deadline for serving defendants in Kennedy's California lawsuit. The official date on the document was July 2, 1991. As we described in footnote 1 of this opinion, that date was changed to July 29,

aside factual findings of the district court unless they are clearly erroneous. See FED. R. CIV. P. 52; Anderson v. Bessemer City, 470 U.S. 564, 573 (1984). Because the record supports the district court's finding that the document was altered, we conclude that Kennedy's second contention is without merit. In sum, the district court did not abuse its discretion by dismissing Kennedy's case with prejudice on the grounds that it was frivolous.

B. The imposition of sanctions

Kennedy also asserts that the district court abused its discretion by fining him $100.00 and by ordering that no further civil actions be accepted from him until the fine is paid or lifted, or until leave to file is granted. We disagree. Kennedy's pro se status does not protect him from the imposition of sanctions for filing unnecessary claims. See Gelabert v. Lynaugh, 894 F.2d 746, 748 (5th Cir. 1990). We review the imposition of sanctions on pro se litigants proceeding pauperis for abuse of discretion. See Mendoza v. Lynaugh, 989 F.2d 191, 195 (5th Cir. 1993). The district court determined that Kennedy should be deterred from continuing to burden the court system

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1991. If the date had actually been July 29, Kennedy's claim that the mail-room employees caused the dismissal of that lawsuit might have merit, provided he could establish his assertion that he received no envelopes between July 29 and October 13, 1991. However, it is uncontested that Kennedy received approximately twenty envelopes between July 1 and July 29, 1991. Kennedy could have used any of those envelopes to serve the defendants in the California lawsuit. He chose not to do so.

with unnecessary cases. Considering the numerous cases Kennedy now has pending around the country and the frivolous nature of this particular claim, we cannot say that the district court's sanction constitutes an abuse of discretion.

Finally, we note that Kennedy's litigiousness is particularly disturbing in light of his willingness to alter court documents. This is at least the second time that Kennedy has submitted fraudulently altered exhibits to this court. In Kennedy v. Garner, No. 92-8283 (5th Cir. Mar. 4, 1993), we affirmed the dismissal of Kennedy's case with prejudice for filing forged affidavits in the district court. We strongly condemn these attempts to deceive the court. We believe that the sanctions upheld here should prove to be sufficient deterrent to a plaintiff of Kennedy's financial status; however, Kennedy is forewarned that his pursuit of any similar future actions in this court will provide grounds for severe sanctions under Rule 38 of the Federal Rules of Appellate Procedure.[4]

III. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's judgment.

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[4] Rule 38 of the Federal Rules of Appellate Procedure provides: "If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee."