

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8666
Conference Calendar

JAMES DUKE CREEL,

Plaintiff-Appellant,

versus

SELDON HALE,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-92-CV-420
- - - - -

May 6, 1993

Before POLITZ, Chief Judge,
HIGGINBOTHAM, and DEMOSS, Circuit Judges.

PER CURIAM:*

A dismissal under 28 U.S.C § 1915(d) is reviewed for an abuse of discretion. Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1734, 118 L.Ed.2d 340 (1992). A complaint may be dismissed as frivolous "where it lacks an arguable basis either in law or in fact." Id. at 1733 (citation omitted).

Convicted prisoners do not forfeit all constitutional protections and retain their First Amendment right to freely exercise their religious beliefs. O'Lone v. Estate of Shabazz,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

482 U.S. 342, 348, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987) (citation omitted). However, lawful incarceration brings about the loss or limitation of many privileges and rights. Id. "[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Id. at 349 (citations omitted).

The state may not ordinarily constitutionally enforce a policy of racial segregation in prison housing and administration. Lee v. Washington, 390 U.S. 333-34, 88 S.Ct. 994, 19 L.Ed.2d 1212 (1968). A policy against segregation is reasonably related to the prison's legitimate interest in complying with the constitutional mandate against racial discrimination. Creel's First Amendment right to freely exercise his religious beliefs is outweighed by a legitimate penal interest.

Creel's argument that he is being denied equal protection because certain gang members are segregated by race is without merit because the purpose of such policy is to preserve prison security. Great deference is accorded to the decisions of prison officials with respect to their response to security problems. Turner v. Safley, 482 U.S. 78, 91-93, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987). The segregation of violent inmates is reasonably related to the prison administration's legitimate interest in protecting prison guards and other prisoners from danger and preserving some degree of harmony in the institution. Jones v. Diamond, 636 F.2d 1364, 1374 (5th Cir.) (en banc), cert.

dismissed, 453 U.S. 950 (1981), overruled on other grounds, International Woodworkers of America v. Champion Int'l Corp., 790 F.2d 1174 (5th Cir. 1986) (en banc).

Creel's argument that his incarceration in an integrated facility constitutes cruel and unusual punishment is without merit. Placement in an integrated facility cannot be categorized as "the wanton and unnecessary infliction of pain" or as a condition resulting in the "deprivation of the minimal civilized measure of life's necessities." Wilson v. Lynaugh, 878 F.2d 846, 848 (5th Cir.), cert. denied, 493 U.S. 969 (1989) (internal quotation and citation omitted).

Because Creel has not shown that he can prove a violation of his constitutional rights, there is no arguable basis either in law or in fact to support his recovery under 42 U.S.C. § 1983.

AFFIRMED.