

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1065
Summary Calendar

PASCAL DARRA MORGAN,

Plaintiff-Appellant,

v.

DENNIS TAYLOR, Dispatcher
for Lamb County Jail, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(5:92 CV 253 C)

(March 26, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Pascal Darra Morgan appeals the district court's dismissal of his pro se, in forma pauperis civil rights complaint pursuant to 28 U.S.C. § 1915(d). Finding no error, we affirm.

I.

Proceeding pro se and in forma pauperis, Morgan filed this section 1983 civil rights action against the sheriff and other

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

officials of Lamb County, Texas, alleging a variety of claims arising from his arrest and conviction for aggravated sexual assault and his detention in the Lamb County jail. Morgan's complaint alleges, inter alia: (1) that he was arrested by a county attorney on an invalid warrant; (2) that his court-appointed attorney did not adequately represent him; (3) that another county attorney wrongfully prosecuted him; (4) that the state trial judge committed errors in trying and sentencing him and denied him post-conviction relief; and (5) that, while he was detained in the Lamb County Jail, the jail dispatcher harassed him and tampered with his mail and the sheriff denied him bail, ignored his complaints about jail conditions, refused to provide him with jail grievance forms, and denied him access to a law library or other form of legal assistance. Morgan alleged virtually no specific facts with regard to any of these claims.

The district court concluded that the bulk of Morgan's claims were frivolous because they had no basis in law or in fact and dismissed them without prejudice pursuant to 28 U.S.C. § 1915(d). With regard to the balance of Morgan's claims--his claims against the sheriff relating to the grievance forms and access to the law library and his claim against the dispatcher relating to the mail-tampering--the district court ordered Morgan to file an amended complaint within twenty days setting forth the facts and circumstances giving rise to the claims. When Morgan failed to amend his complaint within the specified time period, the district court dismissed the balance of his claims, also

without prejudice, and entered judgment accordingly. Morgan timely appealed.

II.

On appeal, Morgan complains that the district court improperly dismissed his civil rights complaint. We disagree.

28 U.S.C. § 1915(d) authorizes a federal court to dismiss a complaint filed in forma pauperis if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). Because the frivolousness determination is discretionary, we review § 1915(d) dismissals only for abuse of that discretion. Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1734 (1992); Parker v. Fort Worth Police Dept., 980 F.2d 1023, 1024 (5th Cir. 1993); Moore v. Mabus, 976 F.2d 268, 270 (5th Cir. 1992). In determining whether a district court has abused its discretion, we may consider, among other things, whether the court has provided a statement explaining the dismissal that facilitates "intelligent appellate review," and whether the dismissal was with or without prejudice. Denton, 112 S.Ct. at 1734; see also Moore, 976 F.2d at 270.

In the case before us, the district court concluded, without discussion, that the bulk of Morgan's claims were frivolous because they had no arguable basis in law or in fact. Although the court did not provide an explanation that facilitates "intelligent appellate review," it did dismiss the claims without prejudice. The court also afforded Morgan the opportunity to amend his complaint with respect to two of his claims. When

Morgan failed to do so, the court also dismissed those claims, again without prejudice. Morgan is therefore free to file another in forma pauperis complaint reasserting his claims with greater specificity.¹ Under these circumstances, we cannot say that the district court abused the discretion accorded it under 28 U.S.C. § 1915(d).

Morgan also requests that we appoint counsel to represent him on appeal. This we decline to do. A civil rights complaintant has no right to the automatic appointment of counsel, and Morgan has not shown that his case presents any exceptional circumstances warranting the appointment of counsel. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

III.

For the foregoing reasons, we AFFIRM the judgment of the district court and DENY Morgan's motion for the appointment of counsel.

¹ We note that many of the claims asserted by Morgan in his civil rights complaint appear to be challenges to the validity of his arrest and conviction. As such, they are more properly asserted on direct appeal of his conviction or in a habeas corpus proceeding.