

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1372
Summary Calendar

EARNEST RAY WALKER,

Plaintiff-Appellant,

versus

NAVARRO COUNTY JAIL, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Texas
(3:92-CV-0035-D)

(June 8, 1993)

Before POLITZ, Chief Judge, DUHÉ and DeMOSS, Circuit Judge.

PER CURIAM:*

Ernest Ray Walker appeals dismissal of his 42 U.S.C. § 1983 action as frivolous. We affirm in part, vacate in part, and remand for proceedings consistent with this opinion.

Walker's civil rights suit concerns his pretrial detention at

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the Navarro County Jail in Corsicana, Texas.¹ He complained of a two-month denial of access to law books and placement in solitary confinement without a hearing. The magistrate judge recommended dismissal of his lawsuit on the grounds that appointment of counsel satisfied Walker's right of access to the courts and his solitary confinement claims were the subject of another lawsuit. The district court adopted the recommendation and dismissed the suit. Walker timely appealed.

We agree that Walker's claim of denial of access to law books lacks an arguable basis in law and thus was properly dismissed.² Walker sought access to a law library to prepare his defense to the criminal charges pending against him. Counsel, however, was appointed to defend him against those charges. The right of access to the courts entitles a prisoner to "adequate law libraries or adequate assistance from persons trained in the law."³ Appointment of counsel satisfied Walker's right of access to the courts.

Walker contends that he needed access to law books because his attorney was inadequate. His remedy for ineffective assistance of counsel does not include the right to law library access in order

¹ Walker was incarcerated at the Ellis II Unit of the Texas Department of Criminal Justice at the time he filed suit.

² **Neitzke v. Williams**, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

³ **Bounds v. Smith**, 430 U.S. 817, 828, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977) (emphasis added); see also **Morrow v. Harwell**, 768 F.2d 619 (5th Cir. 1985).

to second-guess counsel during the course of representation. That remains for another proceeding.⁴

On appeal Walker asks that we certify this suit as a class action and order equitable relief on behalf of present jail inmates. We decline to do so because he did not seek class certification in the trial court.

Walker's claims concerning his four-day confinement in isolation should not have been dismissed as frivolous. They address a different period of solitary confinement than that of which Walker complains in his other section 1983 action, No. 3-91-CV-1690-D. Walker asserts that he was placed in solitary confinement without a hearing because he helped other inmates with their legal matters and obtained access to legal materials by writing to a federal district judge. Those allegations at least arguably state claims for denial of due process⁵ and retaliation for the exercise of legal rights.⁶ The facts alleged are not "clearly baseless."⁷ Accordingly, those claims must be reinstated.

⁴ See **Richardson v. Fleming**, 651 F.2d 366 (5th Cir. 1981).

⁵ **Pembroke v. Wood County, Tex.**, 981 F.2d 225 (5th Cir. 1993), pet. for cert. filed, 61 U.S.L.W. 3775 (April 19, 1993) (No. 92-1744).

⁶ **United States v. Goodwin**, 457 U.S. 368, 102 S.Ct. 2485, 73 L.Ed.2d 74 (1982); **Johnson v. Avery**, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969).

⁷ **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 (1992).

Finally, Walker has filed with us a document entitled "Motion for Summary Judgment." Such motions can be filed only with the district court.⁸ The motion is dismissed without prejudice.

AFFIRMED IN PART, VACATED IN PART, and REMANDED for proceedings consistent with this opinion.

⁸ Fed.R.Civ.P. 1, 56.