

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-1447  
Summary Calendar

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ALONZO DIEGO FULLER,

Plaintiff-Appellant,

VERSUS

WILLIAM B. DONAHOO, Sheriff of Brown County,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
(6:92 CV 0053 C)

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(August 10, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Fuller challenges the district court's dismissal of his § 1983 suit against Sheriff William Donahoo as custodian of the Brown County, Texas jail. We affirm.

I.

Alonzo Diego Fuller filed a § 1983 complaint against Sheriff Donahoo of Brown County, alleging that he was unfairly segregated

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

from the general inmate population and that he was denied other constitutional rights as a pretrial detainee and as a convicted prisoner in the Brown County jail.

The magistrate judge ordered an evidentiary hearing pursuant to 28 U.S.C. § 636(b)(1)(B). After evidence was presented, the magistrate judge made findings of fact, including a finding that Fuller filed his complaint to harass the defendant. The magistrate judge recommended that Fuller's complaint be dismissed with sanctions. The district court overruled Fuller's objections and adopted the magistrate judge's report and recommendation, dismissing Fuller's complaint, and, **inter alia**, imposing a \$250 sanction.<sup>2</sup> Fuller filed a timely notice of appeal.

## II.

### A. **Spears** Hearing Versus § 636(b)(1)(B) Hearing

Fuller argues **pro se** that the magistrate judge abused his discretion when he conducted a hearing under **Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985), and then addressed the merits, making credibility determinations. Fuller is apparently confused. The hearing was not pursuant to **Spears** but was pursuant to § 636(b)(1)(B), one of the options presented to the magistrate by the district court in its referral order. **See McCarty v. Bronson**, 500 U.S. 136, 111 S.Ct. 1737, 1740-43 (1991). In a § 636(b)(1)(B) hearing, the merits of Fuller's allegations may be fully addressed.

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<sup>2</sup> The district judge subsequently ordered Fuller to pay the defendant's attorney's fees, totalling \$5,177. Fuller does not appeal that ruling.

**See** 28 U.S.C. § 636(b)(1)(B); **see Flowers v. Phelps**, 956 F.2d 488, 491 (5th Cir. 1992).

Relatedly, Fuller argues that the district court abused its discretion in dismissing his claim as frivolous under § 1915(d) because the district court improperly addressed the merits. Again, Fuller is confused as to the nature of the dismissal of his suit. The district court did not dismiss his claim as frivolous under § 1915(d), but rather adopted the magistrate's credibility determinations following a hearing pursuant to § 636(b)(1)(B). As discussed above, the magistrate properly reached the merits under § 636(b)(1)(B).

Our review of the record leads us to conclude that the district court did not commit clear error in determining that Fuller's claims were incredible and dismissing his suit. Contained in the record is a letter from to Fuller to the defendant threatening to "cause an expensive legal blood bath" against the county unless he was released to visit his son.<sup>3</sup>

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<sup>3</sup> The letter provides, in pertinent part:  
You have Denied my request to visit my son  
who is at Shriner's Hospital--by way of  
ignoring my request  
. . . . Because I am in need to see my son .  
. . I am forced to tie this County Jail in  
expensive civil litigation . . . . There are  
approx. 20 inmates I can easily influence to  
seek action against the jail. . . . It is  
very clear that I am a litigious litigant--  
and will prosecute civil actions should my  
request comes [sic] unanswered . . . . Please  
let us not cause an expensive legal blood  
bath. It will cost me nothing--but it will  
cost the County thousands \$ \$ \$. Many of  
your detainees question me about several  
areas of law dealing with their rights . . .

Fuller did not deny writing the letter. He later apologized for writing it and promised that he would refrain from filing vexatious lawsuits against the jail. A year later, he filed the instant lawsuit. Fuller also testified at the evidentiary hearing that he had filed other lawsuits against the defendant.

The magistrate judge made a finding that Fuller had filed this lawsuit "wholly for purposes of harassment." That finding, which the district court adopted, was not clearly erroneous. Thus, the district court did not abuse its discretion in dismissing Fuller's complaint. **See Pittman**, 980 F.2d at 994.

#### B. Due Process

Fuller argues next that his disciplinary hearing failed to comply with minimum due process requirements. This argument must also fail. Under **Wolff v. McDonnell**, 418 U.S. 539 (1974), an inmate involved in a disciplinary hearing is entitled to (1) written notice of alleged violation at least 24 hours before the hearing; (2) an opportunity to call witnesses and present evidence; and (3) a written statement by the factfinder as to the evidence on which he relied and the reason for the action taken. Evidence was

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. Believe me, if denied again, I will seek every avenue I know to tie this Jail up in litigation that this Jail will be under investigation - or - broke. What will it cost you to approve my request? **Nothing.** What will it cost you to deny me? \$ \$ \$. I am not threatening you--nor am I indicating threats. I'm writing cause [sic] you have allowed many others to be released by way of P.R. bond--reduction of bond--etc. . . I expect compliance by Wednesday.

presented at the § 636(b)(1)(B) hearing that Fuller received timely notice of the disciplinary hearing and declined to exercise his right to call witnesses and present evidence. Moreover, the disciplinary hearing officer relied on a written incident report detailing the charges against Fuller.

Based on the evidence presented, the district court did not clearly err in determining that Fuller's hearing complied with due process requirements.

#### C. Access to the Courts

Fuller argues next that the failure of the defendant to provide access to law books deprived him of his constitutional right of access to the courts. In light of the recommended disposition, this Court need not address the issue.

#### D. Sanctions

Fuller argues next that the sanctions imposed by the district court violated his right to due process. Fed. R. Civ. P. 11 directs district courts to impose sanctions against a litigant who signs frivolous or abusive pleadings. District courts may impose Rule 11 sanctions on **pro se** litigants. **See, e.g., Whittington v. Lynaugh**, 842 F.2d 818, 820-21 (5th Cir.), **cert. denied**, 488 U.S. 840 (1988). A district court's imposition of sanctions is reviewed for abuse of discretion, and findings of fact underlying a Rule 11 sanction are reviewed under the "clearly erroneous" standard. **See Thomas v. Capital Sec. Services, Inc.**, 836 F.2d 866, 871-72 (5th Cir. 1988) (en banc).

The district court's finding that Fuller filed his lawsuit to

retaliate against the defendant was not clearly erroneous. As set forth below, Fuller fails to demonstrate that the sanction was an abuse of discretion.

Fuller's argument that he should have been warned before the magistrate judge recommended sanctions must fail. The imposition of Rule 11 sanctions must comport with due process and "requires adequate notice and an opportunity to be heard." **American Airlines, Inc. v. Allied Pilots Ass'n**, 968 F.2d 523, 530 (5th Cir. 1992). The requisite level of formality of the notice and proceedings must be commensurate with the level of sanctions imposed. **Id.** (citation omitted). If a complaint is not "obviously defective within the context of Rule 11," the district court may impose sanctions **sua sponte** at the end of trial without prior warning. **See Thomas**, 836 F.2d at 881. The complaint in this case was not "obviously defective."

Furthermore, the magistrate judge's recommendation that Fuller be barred from proceeding IFP until he paid \$250 was not a final disposition. Fuller filed objections to the magistrate judge's report and recommendation, contending, as he does on appeal, that he lacked notice and an opportunity to be heard.

The district judge overruled those objections and imposed sanctions. Fuller thus had prior notice of the recommended sanction and had an opportunity to be heard. **See American Airlines**, 968 F.2d at 530.

Fuller argues further that his letter to the defendant cannot be a basis for sanctions because the letter represents protected

First Amendment activity. Fuller's argument is misplaced; there is no First Amendment exception to a Rule 11 violation.

AFFIRMED.