IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1969

SAMUEL JACKSON,

Plaintiff-Appellant,

versus

DISTRICT ATTORNEY'S OFFICE,
DEAF SMITH COUNTY, TEXAS,
ET AL.,

Defendants-Appellees.

* * * * * * * * * * * * * * * * * * * *

No. 93-1971

SAMUEL JACKSON,

Plaintiff-Appellant,

versus

JOE C. BROWN, JR., a/k/a
Sheriff, Deaf Smith County, Texas,
ET AL.,

Defendants-Appellees.

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No. 93-1972

SAMUEL JACKSON,

Plaintiff-Appellant,

versus

SCOTT WARD, Jailer, Deaf Smith
County Jail, Hereford, Texas, ET AL.,

Defendants-Appellees.

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Appeals from the United States District Court
for the Northern District of Texas
USDC Nos. 2:91-CV-270, 2:91-CV-272 & 2:92-CV-42

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(July 19, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:*

In a one-month period, pre-trial detainee Samuel Jackson, who is now a Texas state prisoner, filed three civil rights lawsuits that were dismissed as frivolous after Jackson was granted leave to proceed in forma pauperis (IFP). He appeals the dismissals but does not appeal the sanctions that the magistrate judge, before whom the parties consented to proceed, imposed upon Jackson for filing these and other frivolous lawsuits.

A frivolous IFP complaint may be dismissed. 28 U.S.C. § 1915(d); Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993). A claim that has no arguable basis in law or fact is subject to such a dismissal. Booker, 2 F.3d at 115. We review for abuse of discretion. Id.

No. 93-1969
Jackson v. District Attorney's Office

Jackson's suit alleging that a district attorney refused his demand that certain parties be prosecuted for violating Jackson's rights is frivolous because prosecutors are absolutely immune from 42 U.S.C. § 1983 suit for their decisions to file and not file criminal charges. Chrissy F. by Medley v. Mississippi Dep't of Public Welfare, 925 F.2d 844, 849 (5th Cir. 1991); Oliver v. Collins, 904 F.2d 278, 281 (5th Cir. 1990). Furthermore, no

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

person has a constitutionally protected right to have any other person criminally prosecuted. Sattler v. Johnson, 857 F.2d 224, 227 (4th Cir. 1988).

No. 93-1971
Jackson v. Brown

Jackson's suit against jail officials for denial of medical and dental care; denial of access to a law library; denial of personal hygiene supplies, stamps, and envelopes; and refusal to repair a shower, sink, and toilet is frivolous for the following reasons. Though Jackson complained of not seeing a physician for about eleven days after his arrest, he never alleged that he described to the defendants the nature of his pre-existing ulcer and lower back condition in such a way as to indicate that he needed medical attention immediately upon his arrest. Nothing in Jackson's numerous pleadings and hearing that he had pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985), indicates that the defendants did not act with objective reasonableness. See Fields v. City of South Houston, 922 F.2d 1183, 1191 (5th Cir. 1991).

Jackson does not mention the dental claim on appeal. Issues not raised on appeal are abandoned. Hobbs v. Blackburn, 752 F.2d 1079, 1083 (5th Cir.), cert. denied, 474 U.S. 838 (1985). Accordingly, the dental claim is abandoned.

As to the law library claim, Jackson was not limited in meaningful access to the courts by being restricted to the use of one law library that he found to be inadequate before being allowed to use a law library that he found satisfactory. See

Mann v. Smith, 796 F.2d 79, 84 (5th Cir. 1986); Richardson v. McDonnell, 841 F.2d 120, 122 (5th Cir. 1988).

As to the sanitary facilities claim, Jackson merely states that jail officials did not repair a shower, sink, and toilet. He never identified the facilities that were in disrepair, the extent to which they did not work, whether he was supposed to use them, who failed to repair them, or how he was harmed by the disrepair. Jackson has failed to allege any specific facts to support his claim. See Lewis v. Woods, 848 F.2d 649, 652 (1988).

As to the indigent supplies claim, Jackson presents nothing for review because that claim was severed and consolidated with another action. Jackson does not challenge the severance and consolidation.

No. 93-1972
Jackson v. Ward

Jackson's suit alleging that he was denied emergency medical care following his fall out of bed and that he was forced to sleep on a mattress on the floor is frivolous for the following reasons. The Constitution is not offended when jail officers require a pre-trial detainee to sleep on a mattress on the floor. Mann, 796 F.2d at 85. Jackson mentioned bugs on the floor but made no specific allegations about them.

Following his alleged fall, Jackson presented to jail officers no signs of serious injury that could be aggravated by waiting until the following day to see a doctor. Jackson's allegations do not indicate that the officers' refusal to take him for emergency medical treatment immediately after the fall

was not objectively reasonable. See Fields, 922 F.2d at 1191. Allegations of signs of serious injury that Jackson makes for the first time in his reply brief have no effect. Self v. Blackburn, 751 F.2d 789, 793 (5th Cir. 1985); Knighten v. Commissioner, 702 F.2d 59, 60 & n.1 (5th Cir.), cert. denied, 464 U.S. 897 (1983).

The magistrate judge did not abuse his discretion in dismissing all three complaints. Appeals, too, may be frivolous. When the result is obvious or the arguments of error are wholly without merit, an appeal is frivolous. Coghlan v. Starkey, 852 F.2d 806, 811 (5th Cir. 1988). These three appeals so qualify and are dismissed. See 5th Cir. R. 42.2. All outstanding motions are denied.

Sanctions

After Jackson filed the instant appeals, this Court warned him that sanctions would result from future frivolous appeals. Jackson v. TDCJ, No. 93-5325 (5th Cir. Mar. 23, 1994) (unpublished). Because another frivolous appeal was filed and briefed before that warning, this Court imposed no sanctions for that second appeal but reminded Jackson that the prior warning retained its force. Jackson v. TDCJ Roach Unit, No. 94-10127, slip op. at 2 (5th Cir. May 17, 1994) (unpublished).

Ordinarily, a warning precedes the imposition of sanctions against a pro se litigant. When a litigant's conduct is especially egregious, however, a warning is not a pre-requisite to a sanction. Cf. Moody v. Baker, 857 F.2d 256, 258 (5th Cir.), cert. denied, 488 U.S. 985 (1988) (A Fed. R. Civ. P. 11 sanction is generally preceded by a warning but may be imposed when

litigant's conduct is especially egregious.).

Jackson has filed numerous frivolous suits in a short time. The magistrate judge warned him about sanctions and gave him an opportunity to withdraw frivolous cases, which Jackson refused to do. The magistrate judge then sanctioned him. Undeterred, Jackson has persisted with these frivolous cases. Such conduct is especially egregious.

Accordingly, we impose against Jackson a monetary sanction of $50 for each of these three appeals, for a total of $150. Until Jackson pays the Clerk of this Court the entire $150 monetary sanction imposed, Jackson will not be permitted to file any further pleadings, either in the district courts of this Circuit or in this Court, without obtaining leave of court to do so. If Jackson has any other appeals pending in this Court at this time, he should review them in light of the foregoing sanction and move to withdraw any appeal that is frivolous.

APPEALS DISMISSED, ALL OUTSTANDING MOTIONS DENIED, SANCTIONS IMPOSED.