UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2173
Summary Calendar

MICHAEL ANTHONY EVANS,

Plaintiff-Appellant,

VERSUS

JAMES A. COLLINS, Director,
Texas Dept. of Criminal Justice,
Institutional Division,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-91-3540)

(November 17, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Evans appeals the dismissal of his § 1983 suit. We affirm.

I.

The district court accurately described the factual background:

> This plaintiff is an inmate of the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID), housed in the Huntsville Unit. He filed this civil rights complaint pro se, and applied for pauper status

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

under 28 U.S.C. § 1915. Alleging that his constitutional rights had been violated, he sought damages under 42 U.S.C. § 1983.

In his original complaint, Plaintiff Evans claimed that he was subjected to sexual harassment on several occasions between November of 1990 and April of 1991 when Office Roark, a woman, made remarks and asked questions about Evans' alleged homosexuality. When Evans filed a grievance about Roark's question, another officer [allegedly] retaliated by making remarks to Evans about his grievance and by assigning Evans the job of polishing a garbage can. On June 20, 1991 Evans, still trying to pursue his grievance against Officer Roark, asked a third officer to sign an affidavit. This resulted in Evans' receiving a disciplinary case for soliciting assistance from a guard; moreover, the affidavit was confiscated. On July 5, 1991 [Evans claims that] a fourth officer conducted an unnecessary search of Evans' cell, taking a pair of tennis shoes in the process. The officer failed to complete the usual paperwork concerning the confiscation, so on July 8 Evans filed another grievance about that. Later the same day he was asked to sign the confiscation paperwork, but he refused. He construes all of these events as retaliatory.

In addition to his original complaint, Evans stated his claims in a More Definite Statement, a Memorandum, and a Motion for Temporary Restraining Order. Evans said he was never physically harmed by any guard, although two inmates once tried to assault him. He described additional allegedly retaliatory incidents, including an assignment to pull grass with his hands rather than with a gardening tool, an additional search of his cell during which a three-ring binder was taken, and an incident when a guard threw his mail on the floor.

II.

To prevail in a § 1983 action, the plaintiff must show a deprivation of a right secured by the Constitution and laws of the United States, and that the deprivation was caused by a person acting under color of state law. **See, e.g., Manax v. McNamara**, 842 F.2d 808, 812 (5th Cir. 1988). A court may dismiss a complaint of a plaintiff seeking **in forma pauperis** status when the claim has no, or slight, realistic chance of ultimate success, or when the claim

has no arguable basis in law and fact. **See** 28 U.S.C. § 1915; **Wilson v. Lynaugh**, 878 F.2d 846, 849 (5th Cir. 1989).

An inmate has no constitutional right to be free from verbal abuse. **Cook v. Houston Post**, 616 F.2d 791, 794 (5th Cir. 1980); **Ellingburg v. Lucas**, 518 F.2d 1196 (8th Cir. 1975). More specifically, an inmate's constitutional rights are not violated by a guard's threatening language or gestures, or a guard's at will cell search, even when the guard loses or destroys an inmate's personal property. **McFadden v. Luca**, 713 F.2d 143 (5th Cir. 1983) (threatening language). **Hudson v. Palmer**, 468 U.S. 517 (1984) (cell search). Similarly, an inmate has no constitutional right to have, or to be free from, any particular work assignment. **Mikeska v. Collins**, 900 F.2d 833, 837 (5th Cir. 1990), **subst. opn. on other grounds**, 928 F.2d 126 (5th Cir. 1991). Thus, we agree with the district court that the incidents Evans described such as the alleged verbal abuse, the assignment to polish a garbage can, the allegedly unnecessary search of Evans' cell, the assignment to pull grass with his hands rather than with a gardening tool, and the throwing of Evans' mail on the floor do not state an arguable claim of a constitutional violation.

We also agree with the district court that none of the conduct under examination raises the inference of retaliation for Evans' use of the legal system. **See Whittington v. Lynaugh**, 842 F.2d 818, 819 (5th Cir. 1988) (requiring that the conduct raise the inference of retaliation). In answer to the court's request for a more definite statement, Evans states that he was given a disciplinary

citation for being in an unauthorized area and that one of the officers required him to shine a garbage can as his disciplinary penalty. Evans claims that the citation and the assignment amount to retaliation because no one had ever seen an inmate shine a garbage can and because the officer issuing the assignment said: "We are going to make an example out of you." Nothing in Evans' statement suggests that the officer's statement referred to his filing a grievance, nor does Evans allege that he was not in an unauthorized area when he was cited. Moreover, we do not think that a novel work assignment creates the inference of retaliation. At best, Evans' statement merely reflects a subjective belief that he was being retaliated against. Without more, a single disciplinary citation and a novel work assignment do not create the inference that the actions were taken in retaliation.

Evans also claims that he was retaliated against because his cell was searched several times (four at most) and because a notebook and a pair of tennis shoes found in his cell were classified as contraband. Evans alleges that an officer asked him about his grievance during the first search in May 1991, and that other searches occurred in July 1991.

As support for his contention that the cell searches were retaliatory, Evans cites **Scher v. Engelke**, 943 F.2d 921, 922-23 (8th Cir. 1991), **cert. denied**, 112 S.Ct. 1516 (1992), which held that evidence that an inmate's cell was searched ten times in nineteen days and left in complete disarray showed a pattern of calculated harassment amounting to cruel and unusual punishment.

The searches of Evans' cell were far fewer in number than the searches in **Scher** and occurred over nearly a two month time period. Furthermore, Evans makes no complaint that his cell was left in disarray.

In sum, the incidents described by Evans do not create the inference of retaliation. The subjective belief that the work assignment and cell searches were retaliatory is not enough to support the inference that the actions were retaliatory. Moreover, Evans admitted that he was able to pursue his grievances without interference and that he was given notice and an opportunity to be heard at all disciplinary proceedings.

We also reject Evans' argument that the district court erred in failing to hold a **Spears** hearing on his claim. **Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985). The purpose of a **Spears** hearing is to "dig beneath the conclusional allegations . . . to flesh out the substance of a prisoner's claims" to determine whether the claim is frivolous. **Wesson v. Oglesby**, 910 F.2d 278, 281 (5th Cir. 1990). The district court used the alternative method of sending Evans a questionnaire requiring greater detail about his complaint, which is an acceptable alternative to a **Spears** hearing. **See Parker v. Carpenter**, 978 F.2d 190, 192 n.2 (5th Cir. 1992).

Accordingly, the judgment of the district court is

AFFIRMED.