

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4004  
Conference Calendar

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ESEQUIEL RODRIGUEZ,

Plaintiff-Appellant,

versus

J.E. ALFORD, Michael Unit  
Warden,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 92-CV-574  
- - - - -

May 7, 1993

Before REAVLEY, KING, and DAVIS, Circuit Judges.

PER CURIAM:\*

Esequiel Rodriguez filed a pro se, in forma pauperis (IFP) civil rights complaint against warden J.E. Alford alleging that Alford did not have the authority to require him to attend school and therefore he could not punish him for failing to attend on two occasions. The district court dismissed the complaint as frivolous.

A complaint filed IFP can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id. at 468.

Rodriguez argues that he should not have been punished for failing to attend school because Alford did not have the authority to require him to attend school. He contends that TDCJ-ID does not have a mandatory policy requiring state prisoners to get their GED and that he can be punished only for violating TDCJ-ID rules. To obtain relief under § 1983 Rodriguez must prove that he was deprived of a Constitutional right or federal statutory right and that the persons depriving him of that right acted under color of law. Hernandez v. Maxwell, 905 F.2d 94, 95 (5th Cir. 1990).

Rodriguez's claim is not factually supported by the record. Failing to attend the compulsory school program is a level three offense under the TDCJ-ID rules. See TDC Disciplinary Rules and Procedures for Inmates, 12. Alford was enforcing a TDCJ-ID rule which Rodriguez concedes he must obey.

Even if school attendance is not mandated by the TDCJ-ID rules, all state prisoners are required to obey the TDCJ-ID rules and the rules of the unit at which they are housed. TDC Disciplinary Rules and Procedures for Inmates, 1. The prison regulations do not contain any substantive limitation on the individual wardens' authority to create rules for a particular unit consistent with the TDCJ-ID rules, and therefore Rodriguez

has failed to show that Alford did not have the authority to require him to attend school. See Olim v. Wakinekona, 461 U.S. 238, 249, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983). Rodriguez has failed to state a claim cognizable under § 1983, and the district court properly dismissed his claim as frivolous.

AFFIRMED.