IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-4155
Summary Calendar

LEOPOLD L. PEDRAZA,

Plaintiff-Appellant,

versus

J. PIPPINS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Texas
(89-CV-92)

(March 16, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Leopold Lee Pedraza, an inmate in the Beto II Unit of the Texas Department of Criminal Justice - Institutional Division, filed an action under 42 U.S.C. § 1983 against corrections officers J. Pippins and Morris Colvin alleging that they harassed and threatened him in retaliation for his legal activities. Based on the recommendation of the magistrate judge, the district court

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

dismissed his claim as frivolous. This court vacated the dismissal and remanded the case to the district court. Pedraza v. Pippins, No. 90-4788 (5th Cir., May 17, 1991) (unpublished; R. 162-67).

On March 6, 1992, Pedraza filed an amended complaint.[1] In the amended complaint, Pedraza listed 32 defendants, including Pippins and Colvin. The magistrate judge examined the amended complaint and recommended that the claims against Sergeant Lambright and Major Duke (relating to an incident of January 11, 1989) and against Lieutenant Pippins and Officer Colvin (related to incidents on February 18 and 22, 1989) should go forward, with the rest of the claims being dismissed as frivolous. Pedraza objected to this recommendation. The magistrate judge filed the supplemental report addressing Pedraza's objections. Pedraza filed objections to the supplemental report. The district court adopted the report and supplemental report of the magistrate judge, dismissing all but the above named four officers from the lawsuit.

The magistrate judge held an evidentiary hearing on October 1, 1992. She subsequently issued a report and recommendation that Pedraza's action be dismissed with prejudice based upon findings of fact made from testimony given at the evidentiary hearing. Pedraza objected to this report. The district court considered the

[1]Pedraza had earlier attempted to add David C. Johnson as a party, but Johnson was not a pauper and he was dismissed as a plaintiff for failure to pay the filing fee.

objections, and adopted the findings and conclusions of the magistrate judge. Pedraza timely filed a notice of appeal.

I

Part I of Pedraza's brief on appeal addresses the partial dismissal entered by the district court on June 19, 1992. "Fed. R. App. P. 28(a)(4) requires that the appellant's argument contain the reasons he deserves the requested relief with citation to the authorities, statutes and parts of the record relied on." Weaver v. Puckett, 896 F.2d 126, 128 (5th Cir.) (citations and quotations omitted), cert. denied, 498 U.S. 966 (1990). "Although [the Court] liberally construe[s] the briefs of pro se appellants, [the Court] also require[s] that arguments must be briefed to be preserved." Price v. Digital Equip. Corp., 846 F.2d 1026, 1027-28 (5th Cir. 1988). In his brief, Pedraza has not made any specific assertions regarding this case (except as discussed below). He has simply stated that the district court improperly failed to allow him to amend his compliant, that the district court improperly dismissed some of the actions because they were filed past the statute of limitations, and that the district court improperly found that the claims were frivolous. Such general allegations giving only broad standards of review and not citing to specific errors is insufficient to preserve issues for appeal. See Brinkmann v. Abner, 813 F.2d 744, 748 (5th Cir. 1987).

II

Pedraza has made a specific claim of error on the part of the district court in the first portion of his brief. He contends that the district court was incorrect in finding that his claim that prison medical personnel conspired to discriminate and retaliate against him between August 1987 and March 1989 had been barred by the statute of limitations. In addressing Pedraza's objections to her report, the magistrate judge assumed without deciding that the claims were not barred by the statute of limitations.

Pedraza asserted was that he was required to wait before he was treated at sick call. The worst of the allegations was only that he was required to return the following day to receive treatment. In her supplemental report, the magistrate judge quoted Pedraza's entire argument regarding these claims of retaliation and individually examined the 22 separate sick call slips Pedraza submitted to support his claims. The magistrate judge found--this was adopted by the district court--that Pedraza offered "no facts in support of his claim that the medical defendants conspired against him or violated any of his constitutional rights." On appeal, Pedraza makes only broad legal arguments that his claim should not have been dismissed, but he does not specifically attack the reasoning of the district court. See Brinkmann, 813 F.2d at 748.

Additionally, Pedraza has not made any allegations with respect to these claims that could be strengthened by "further

factual development and specificity." See Eason v. Thaler, ___ F.3d ___ (5th Cir. Feb. 10, 1994, No. 93-1765), 1994 WL 19109 at *2. In Eason, the prisoner asserted that prison officials placed him in lockdown without a hearing, denied him access to the law library, and violated his right to exercise his Muslim religion by giving only pork food to eat. Id. at *1. The court held that it was inappropriate to dismiss the claims as frivolous because additional factual development may have allowed them to "pass section 1915(d)[2] muster." Id. at *2 (footnote added).

It is well settled that prison officials may not retaliate against an inmate because he exercises his right to access to the courts. Gibbs v. King, 779 F.2d 1040, 1046 (5th Cir.), cert. denied, 476 U.S. 1117 (1986). However, if the conduct claimed to constitute retaliation would not, by itself, raise the inference that such conduct was retaliatory, the assertion of the claim itself without supporting facts is insufficient. Whittington v. Lynaugh, 842 F.2d 818, 819 (5th Cir.), cert. denied, 488 U.S. 840 (1988). On appeal, Pedraza has not pointed to a single factual allegation that if taken as true would even arguably show that the prison medical staff retaliated against or harassed him. Pedraza has not shown that the district court abused its discretion in dismissing these claims.[3]

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[2]28 U.S.C. § 1915(d).

[3]If the court views this analysis as equivalent to dismissing Pedraza's claims of retaliation as conclusional, then the court may

III

In Part II of his brief, Pedraza is apparently taking issue with the district court's dismissal of his claims against Pippins, Colvin, Duke, and Lambright. Contrary to Pedraza's assertions, these claims were not dismissed as frivolous under 28 U.S.C. § 1915(d), but were dismissed on their merits following an evidentiary hearing held by the magistrate judge in accordance with Flowers v. Phelps, 956 F.2d 488 (5th Cir.) modified on other grounds, 964 F.2d 400 (5th Cir. 1992).[4] In dismissing the claims against these four defendants, the district court made eight specific findings of fact and concluded "that none of the Defendant's retaliated or threatened to retaliate against [Pedraza] for his writ-writing activities or for filing grievances. The Court further concludes that none of the Defendants used excessive force on [Pedraza] which would violate his Eighth Amendment rights to be free from the infliction of cruel and unusual punishment." Additionally, the district court concluded that none of the four

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wish to consider Class III disposition. The court has not yet resolved the question whether the heightened pleading requirement remains applicable to conclusional claims of conspiracy following the Supreme Court's decision in Leatherman v. Tarrant County Narcotics Unit, ___ U.S. ___, 113 S.Ct. 1160, 1162, 122 L.Ed.2d 517 (1993). See also Branch v. Tunnell, ___ F.3d ___ (9th Cir. Jan. 12, 1994, No. 93-35144), 1994 WL 5496.

[4]Pedraza argues that he did not consent to have the magistrate judge try the case and requested a jury in both his original and amended complaints. The magistrate judge found that no jury demand was filed in compliance with the local rules of the Eastern District of Texas (jury demands to be filed on a separate instrument and not included in the complaint).

defendants violated any of Pedraza's constitutional rights. These conclusions were based on the following eight findings of fact:

1. That Plaintiff Leopold Lee Pedraza was removed from the chow hall and brought to the sergeant's office by Officer Holden and Officer Dyess on January 11, 1989.

2. This removal was done because Pedraza refused to comply with an order to stop talking in the hallway.

3. In the sergeant's office, Pedraza met with Sergeant Lambright and Major Duke. The officers made no threats to Pedraza during this meeting, nor did they refer to Pedraza's writ-writing activities.

4. No force was used against Pedraza during this meeting.

5. On February 17, 1989, Officer Colvin wrote Pedraza a disciplinary case for going to the library before it was called.

6. The following day, Pedraza was called out of the law library to a meeting with Lieutenant Pippins.

7. No threats or demands to drop his lawsuit were directed at Pedraza at during this meeting.

8. The disciplinary case written by Colvin was later expunged.

We review factual findings under the "clearly erroneous" standard. Fed. R. Civ. P. 52; Johnston v. Lucas, 786 F.2d 1254, 1257 (5th Cir. 1986). A district court's findings of fact are not clearly erroneous if they are "plausible in light of the record viewed in its entirety." Anderson v. City of Bessemer City, 470 U.S. 564, 573-74, 104 S.Ct. 1504, 84 L.Ed.2d 518 (1985). Moreover, credibility determinations are peculiarly within the province of the district court when it sits as a trier of fact. Kendall v.

Block, 821 F.2d 1142, 1146 (5th Cir. 1987). This court will declare testimony incredible as a matter of law only "when testimony is so unbelievable on its face that it defies physical laws." U.S. v. Casteneda, 951 F.2d 44, 48 (5th Cir. 1992) (internal quotation and citation omitted).

On appeal, Pedraza has not asserted that there was no testimony to support these findings of fact.[5] Pedraza's entire argument is that his claim should not have been found meritless because his factual allegations were supported by the testimony of David C. Johnson, a fellow inmate. That Pedraza's assertions and Johnson's testimony were both plausible and internally consistent does not serve to make the testimony of the defense witnesses incredible as a matter of law. Pedraza has not shown or even suggested that the defense's version of events defied physical laws. Therefore, the district court's conclusions based on its findings that Pedraza was not threatened, retaliated against, or cruelly and unusually punished are affirmed.

[5]In her report, the magistrate judge gave a very detailed account of all of the testimony given at the evidentiary hearing. In his objections to the report, Pedraza did not challenge the accuracy of this account, but again alluding to a § 1915(d) dismissal contended that the magistrate judge erred in making credibility determinations.

IV

For the reasons set forth in this opinion, the judgment of the district court is

A F F I R M E D.