

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5549  
Conference Calendar

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MICHAEL WAYNE JACKSON,

Plaintiff-Appellant,

versus

ROBERT MCKINNEY, Feeder Slab  
Operator, Beto II Unit,

Defendant-Appellee

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:93-CV-407

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(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

BY THE COURT:

IT IS ORDERED that Michael Jackson's motion for leave to appeal in forma pauperis (IFP) is DENIED. The appeal lacks arguable merit and is, therefore, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

An in forma pauperis complaint may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993); see Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). This court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S.Ct. at 1734.

Although prison work conditions may amount to cruel and unusual punishment in certain circumstances, Jackson v. Cain, 864 F.2d 1235, 1245 (5th Cir. 1989), there is no indication that the practice at Beto II Unit of requiring inmates to boost or lift hogs from a pit, in and of itself, rises to an Eighth Amendment violation. At the Spears<sup>1</sup> hearing, Jackson acknowledged that he was the only prisoner performing this task who got hurt, and he attributed his injury to weakened stomach muscles due to a prior injury.

However, liberally construing his brief, Jackson contends that this prison-work assignment violated the Eighth Amendment because it was inappropriate to his medical condition. A prison officer's deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment's proscription of cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 104-05, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). This standard is met when a prison official puts a prisoner on a work detail which he knows will seriously aggravate the prisoner's serious physical ailment. Jackson, 864 F.2d at 1246. A negligent assignment to work that is beyond the prisoner's physical abilities, however, is not unconstitutional. Id.

The medical records and the uncontroverted testimony of the prison physician at the Spears hearing indicate that Jackson's medical classification did not include any lifting restrictions until after his stomach injury. Thus, McKinney was not on notice

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<sup>1</sup> Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

prior to the complained-of incident that Jackson could not lift heavy objects. Because the facts, as alleged, do not show that McKinney was deliberately indifferent to Jackson's serious medical need, this claim lacks an arguable basis in law or in fact. The magistrate judge thus did not abuse her discretion in dismissing this claim as frivolous.

Jackson's contention that his right to due process was violated by McKinney's filing of false charges against him is also unavailing. There is no due process violation if a prisoner, who is falsely accused of charges, is given an adequate state procedural remedy to challenge the accusations. Collins v. King, 743 F.2d 248, 253-54 (5th Cir. 1984); see Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986) (prison inmate has no constitutional right against being falsely accused of conduct which might result in deprivation of liberty interest), cert. denied, 485 U.S. 982 (1988). Furthermore, to the extent Jackson challenges the disciplinary proceeding, itself, the record reflects that there was more than "some" evidence to support the disciplinary board's decision. See Stewart v. Thigpen, 730 F.2d 1002, 1005-06 (5th Cir. 1984) (review of disciplinary board's decision limited to whether the decision is supported by "some facts" or "any evidence at all"). Thus, the magistrate judge did not abuse her discretion in dismissing this claim.

Finally, Jackson's conclusional allegation of retaliation, even under a relaxed pleading standard is insufficient to state a claim under 42 U.S.C. § 1983. Because Jackson has not shown any

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violation of his constitutional rights by the defendant, the magistrate judge did not abuse her discretion in dismissing his complaint as frivolous.

MOTION DENIED; APPEAL DISMISSED.