IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5598
Conference Calendar

JAMES E. ROBERTSON ET AL.,

Plaintiffs,

JAMES E. ROBERTSON,

Plaintiff-Appellant,

versus

JAMES A. LYNAUGH ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:91-CV-45
- - - - - - - - - -

(September 20, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

The district court dismissed as frivolous James E. Robertson's claim that he was improperly denied receipt of The Talking Feather. A complaint filed in forma pauperis can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

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.

A prison regulation that impinges on an inmate's constitutional rights is valid if it is reasonably related to legitimate penological interests. Turner v. Safley, 482 U.S. 78, 89-90, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987); see also Brewer v. Wilkinson, 3 F.3d 816, 824-25 (5th Cir. 1993) (applying Turner to mail regulations), cert. denied, 114 S. Ct. 1081 (1994). This Court has upheld the constitutionality of the "publishers only" rule as a valid response to a legitimate security interest. See Guajardo v. Estelle, 580 F.2d 748, 762 (5th Cir. 1978), modified as recognized by Brewer, 3 F.3d at 824. Robertson's constitutional rights were not violated because he was denied receipt of The Talking Feather pursuant to the application of the "publishers only" rule. The district court did not abuse its discretion by dismissing the claim as frivolous.

Robertson also argues that the district court improperly denied his two motions for leave to amend his complaint. This Court reviews the district court's denial of a motion to amend for an abuse of discretion. Ashe v. Corley, 992 F.2d 540, 542 (5th Cir. 1993). Leave should be freely given when justice so requires, but leave to amend is not automatic. Id.

In his first motion for leave to amend Robertson sought only to elaborate on The Talking Feather issue and to add new defendants related to that claim. The claim was frivolous, and the district court did not abuse its discretion by denying the

futile amendment and by declining to conduct an evidentiary hearing. See Davis v. Louisiana State Univ., 876 F.2d 412, 413-14 (5th Cir. 1989); Jacquez v. Procunier, 801 F.2d 789, 793 (5th Cir. 1986).

As Robertson concedes, the claims raised in the second motion to amend were unrelated to The Talking Feather claim and should have been brought in a separate action. Additionally, to the extent that Robertson attempted to raise issues that were in his original complaint, this Court has already affirmed the district court's dismissal of those claims. See Wilson v. Lynaugh, 878 F.2d 846, 850 (5th Cir.), cert. denied, 493 U.S. 960 (1989) (generally cannot relitigate claims that have already been unsuccessfully litigated). The district court did not abuse its discretion by denying the motion.

The judgment of the district court is AFFIRMED.