

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-7488
Summary Calendar

MATTHEW THOMAS CLARKE,

Plaintiff-Appellant,

VERSUS

JAMES ANDY COLLINS, et al.,

Defendants-Appellees.

Appeals from the United States District Court
for the Southern District of Texas
(CA G93-270)

(May 3, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Matthew Thomas Clarke challenges the district court's dismissal of his § 1983 complaint as frivolous under 28 U.S.C. § 1915(d). We affirm.

Clarke filed a **pro se, in forma pauperis** complaint alleging that several Texas Department of Criminal Justice - Institutional Division ("TDCJ-ID") correspondence rules violated his procedural

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

due process rights. Specifically, Clarke alleged: (1) that prison officials conducted a "secret review" of publications not on the approved publication list; (2) that packages were returned arbitrarily to their senders; and (3) that the rules arbitrarily specify which suppliers are authorized publication suppliers. The district court dismissed Clarke's complaint as frivolous under 28 U.S.C. § 1915(d).

An **in forma pauperis** complaint can be dismissed **sua sponte** if it is frivolous. **See Cay v. Estelle**, 789 F.2d 318, 323 (5th Cir. 1986), **modified on other grounds by Booker v. Koonce**, 2 F.3d 114, 116 (5th Cir. 1993). A complaint is frivolous if it lacks an arguable basis in law and fact. **See Ancar v. Sara Plasma, Inc.**, 964 F.2d 465, 468 (5th Cir. 1992). We review such a dismissal for abuse of discretion. **See id.**

In order to obtain relief under 42 U.S.C. § 1983, a plaintiff must show a deprivation of a constitutional or federal statutory right. **See Hernandez v. Maxwell**, 905 F.2d 94, 95 (5th Cir. 1990). A violation of a prison regulation, without more, does not give rise to a constitutional violation. **See Hernandez v. Estelle**, 788 F.2d 1154, 1158 (5th Cir. 1986). Moreover, Clarke admits that he was notified each time a piece of mail was reviewed by mailroom personnel and was apprised of the final disposition of each review. He also was permitted to challenge any refusals through the inmate grievance process. Clark therefore received adequate procedural protections, and as a result, cannot establish a constitutional violation. **See id.**

Finally, to the extent that Clarke argues that the settlement in the **Guajardo** litigation provides a basis for his § 1983 suit, his claim must fail. Remedial court orders are a means of correcting constitutional violations, but they do not create or enlarge constitutional rights. **See Green v. McKaskle**, 788 F.2d 1116, 1123 (5th Cir. 1986).

For the foregoing reasons, we find that the district court did not abuse its discretion in dismissing Clarke's complaint as frivolous. However, as one reason for its dismissal, the court found that the National Certifying Organization for Paralegals and the NCOP Academy for Paralegals were not legal aid organizations within the meaning of TDCJ-ID rules. Because this determination is not necessary to the resolution of this case and may have implications beyond this case, we vacate this finding.

AFFIRMED in part; VACATED in part.