UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-7760
Summary Calendar

WILLIE HENRY JONES,

Plaintiff-Appellant,

VERSUS

LEE ROY BLACK, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas

(4:90-CV-194-D-0)

(June 28, 1994)

Before THORNBERRY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

THORNBERRY, Circuit Judge:[*]

In August 1990, Willie Henry Jones, a prisoner of the State of Mississippi, proceeding pro se and in forma pauperis, filed a complaint in federal district court concerning the conditions of his confinement, his custody status, his medical classification and review of specific retaliatory acts. The magistrate judge

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conducted a hearing pursuant to **Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985), and recommended dismissing the action as frivolous. The district court concurred, denied Jones' objections and dismissed the complaint pursuant to 28 U.S.C. § 1915(d). Jones timely appeals to this Court.

Discussion

A section 1915(d) dismissal is reviewed for abuse of discretion. **Denton v. Hernandez**, ___ U.S. ___, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992). A district court may dismiss a claim as frivolous if it lacks an arguable basis in law or in fact. **Ancar v. Sara Plasma, Inc.**, 964 F.2d 465 (5th Cir. 1992). However, we construe Jones' allegations as true and view them in the light most favorable to him. **Foulds v. Corley**, 833 F.2d 52, 53 (5th Cir. 1987). A dismissal by the district court is premature if the complaint, when viewed in the light most favorable to the plaintiff, states a colorable claim. **Id.** To state a colorable claim under § 1983,[1] "the complaint must show the deprivation of a right, privilege, or immunity that is secured by either the Constitution or laws of the United States" by a person acting under color of state law. **Mahone v. Addicks Utility Dist. of Harris County**, 836 F.2d 921, 927 (5th Cir. 1988).

Jones testified at the **Spears** hearing that he had been serving as an inmate clerk in Unit 22 of the prison for several years when

[1] While Jones has never specifically alleged that his complaint is as an action under 42 U.S.C. § 1983, he has alleged facts which most closely resemble a prisoner's civil rights action under § 1983.

his supervisor was replaced by Lt. McGarrity. Jones alleges that McGarrity made homosexual demands on him and as a result, he no longer desired to work in that unit. Jones then told Unit 22 case manager Juanita Spivey about his dilemma and requested a transfer to another unit. Spivey reported Jones' allegations to Lt. McGarrity. The next day, Jones told Lt. McGarrity that he wanted to resign his position and be transferred to another unit. Apparently the resignation was accepted but Jones was not allowed to clean out his personal effects from the office. Instead, prison officials went through the personal items. The following day, Lt. McGarrity told Jones that during the search of his personal items, officials found items that indicated he was somehow involved in the well publicized money order forgeries that had taken place in the prison. Jones was issued a Rule Violation Report (RVR).[2] Jones alleges that Lt. McGarrity must have falsified evidence about Jones' involvement in this money order scheme, planted it in his personal effects, and turned the information over to internal affairs and the disciplinary committee.

Soon thereafter, the disciplinary committee conducted a hearing and the charges against Jones were dismissed for lack of evidence. Jones was told that he would be allowed to return to Unit 22 and his former clerk position. Jones refused. The classification committee then met and informed Jones that he would be reassigned to Unit 24, Extension area, pending an opening in

[2] The RVR also indicated that Jones was a management problem and had bribed officers.

another unit. A few hours later, Jones was taken to Unit 29 to serve thirty days on the "hoe squad".[3] Jones alleges that this was punishment for revealing McGarrity's homosexual lifestyle and illicit demands on inmates who work for him.

Upon arrival to Unit 29, Jones explained to the Unit Administrator, Lt. Armstrong, that he was physically unable to work on the "hoe squad" because he had a heart condition, needed to take nitroglycerin for pain and shortness of breath, he was 51 years old and he was not of the appropriate medical classification for the squad. In addition, he informed Lt. Armstrong that he was found not guilty by the disciplinary committee so that the transfer to Unit 29 was a mistake. Lt. Armstrong checked on his story but was told that Jones' records indicated that he had a Class I medical classification, which meant he was physically able to work on the squad. Lt. Armstrong then told Jones that if he refused to work on the squad, he would be given a rule violation report for each occurrence, in addition to being placed in the "Sally Port"[4] for each occurrence. Jones refused to work on the squad and was sent

---

[3] The "hoe squad" refers to jobs which are manual agricultural labor in the fields surrounding the prison.

[4] The "Sally Port" is an enclosure in the grounds outside of the unit where inmates are taken who refuse to work. These inmates must remain in the enclosure while the work crew is out at work. The inmates are allowed to come in to eat. There are no toilet facilities in the "Sally Port" nor is there cover from the elements. Apparently, the "Sally Port" is a place where inmates who refuse to work are subjected to the same climatic conditions as those inmates who work in the fields. "[T]he refusal to work presents a threat to the orderly administration of the prison system and unjustified refusal is rightly answered with sanctions or discipline." **Mendoza v. Lynaugh**, 989 F.2d 191, 194 n.4 (5th Cir. 1993).

to the "Sally Port" on several occasions. On one such occasion, Jones passed out in the "Sally Port" from what appeared to be heat exhaustion. Prison officials called the hospital and requested instructions, medical treatment was recommended and those recommendations were implemented. This was the only occasion that Jones became ill from being in the "Sally Port".

Eventually, Jones began working on the hoe squad, but he continued to plead his case to anyone who would listen, including the doctors at the prison. Dr. Phillips reviewed Jones' medical chart and determined that he was able to perform the labor in the fields. Shortly thereafter, Dr. Dial recommended that Jones be given an EKG and an X-ray taken of his heart. Jones was told he would be contacted if any abnormalities were detected. The doctors never contacted him. The X-rays showed that he still had a shot gun pellet lodged in is left ventricle but that this did not change his classification. Jones could find no prison doctor who was willing to change his medical classification.

Eventually, Jones was given another clerk job and taken off of the hoe squad. He served for approximately one year in the new clerk position but was dismissed from that job because he tested positive for marijuana. Jones does not indicate whether he continues to be on the hoe squad, although he testified at the **Spears** hearing that on another occasion he had to have surgery for an internal hernia, which he believes occurred as a result of his being required to perform strenuous manual labor as part of the hoe squad.

Even viewing the facts in a light most favorable to Jones, he has not alleged facts sufficient to show that he was deprived of a right secured by the Constitution or the laws of the United States. While Jones complains that the prison classification rules were not followed before he was assigned to the hoe squad, a state's failure to follow its own procedural regulations does not automatically amount to a constitutional violation. **Jackson v. Cain**, 864 F.2d 1235, 1251-52 (5th Cir. 1989). Unless the conduct trespasses on federal constitutional safeguards, there is no constitutional deprivation. **Id.** at 1252. A prisoner has no constitutional right to a specific work assignment. **Id.** at 1248 n.3. Accordingly, prison officials may transfer prisoners to any job "for almost any reason at all." **Id.** Jones complains that his job transfer and classification change were punishment. A job transfer can be a form of punishment, as long as it is accompanied by minimal due process. **Id.** Jones received a disciplinary hearing and a classification hearing.[5] He also completed the prison administrative grievance procedure and wrote letters of complaint to various prison officials. The prison warden responded to one of his letters and allowed him to speak to Eddie Lucas who was the chairman of the classification committee at the prison. Lucas reviewed Jones' complaints but apparently found no reason to relieve Jones from the hoe squad. Obviously, Jones received due process. Furthermore, after Jones was exonerated by the

[5] At both hearings, Jones was present and able to present his version of the facts.

disciplinary committee of all charges related to the money order scheme, he was offered the opportunity to return to his former clerk job in Unit 22. He refused. Therefore, we conclude that the record simply does not indicate that Jones' job transfer was done as retaliation against Jones' exercise of any constitutional rights. **See Jackson**, 864 F.2d at 1248 n.3. While the job transfer may have been punishment for Jones' actions, Jones clearly received minimal due process. **Id.**

Jones also complains that prison officials were deliberately indifferent to his medical needs. To state a medical claim cognizable under § 1983, a prisoner must allege acts or omissions sufficiently harmful to evidence a deliberate indifference to serious medical needs. **Estelle v. Gamble,** 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed. 2d 251 (1976). Unsuccessful medical treatment, negligence, neglect, and even medical malpractice do not state a claim under § 1983. **Varnado v. Lynaugh**, 920 F.2d 320, 321 (5th Cir. 1991). Nevertheless, a prisoner may be able to show deliberate indifference if he demonstrates that prison officials compelled him to perform physical labor that was beyond his strength, is life-endangering, or causes undue pain. **Jackson**, 864 F.2d at 1246.

Jones argues that because of his age and alleged heart condition, it was unconstitutional to force him to work in the field. The record reflects, however, that Jones rarely took nitroglycerin in the six years before being placed on the hoe squad because the medication gave him headaches; a chest X-ray and EKG

showed no abnormalities; and at least two physicians at different times concluded that there was no reason for Jones to be classified as anything other that a Medical Class I. There is no evidence that working on the hoe squad was beyond Jones' physical abilities; that working in the field was life-endangering; and that the work caused him undue pain. Jones may disagree with the prison physicians diagnosis, but the prison officials have not been deliberately indifferent toward his physical condition. In addition, the record indicates that he eventually was taken off the hoe squad and given another clerk position that he lost after testing positive for drug use.

To the extent that working on the hoe squad might have caused Jones' hernia, there is no indication from the record that prison officials acted with deliberate indifference to Jones' medical needs with respect to the hernia. **Estelle,** 429 U.S. at 106. He was given medical attention and the hernia was removed. With regard to Jones' illness which occurred when he was in "Sally Port", prison officials responded to and treated his condition. Again, prison officials were not deliberately indifferent to his medical needs.

Conclusion

Based on the foregoing, we affirm the dismissal of Jones' claims pursuant to § 1915(d).

AFFIRMED.