IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8033
(Summary Calendar)

JOHNNY R. CRAWFORD,

Plaintiff-Appellant,

versus

DAN MORALES, Atty. General
and JAMES A. COLLINS, Director,
TDC,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W-92-CV-129)

(October 20, 1993)

Before SMITH, WIENER and E. M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Johnny R. Crawford, a state prisoner in Texas, appeals the district court's dismissal of his civil rights suit under 42 U.S.C. § 1983. The court dismissed Crawford's action

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. Agreeing with the district court and finding no reversible error, we affirm, and we also deny as moot Crawford's motion for class certification.

I

FACTS AND PROCEEDINGS

Crawford filed this suit as a civil rights action on his own behalf and on behalf of "all the inmates of T.D.C." He sued Dan Morales, the Attorney General for the State of Texas, and James A. Collins, the Director of the Texas Department of Criminal Justice (TDCJ), alleging that Morales had adopted a policy of forced racial integration of cells, and that Collins had implemented that policy. Further alleging that this policy caused racial violence in the prison, Crawford asked for monetary damages for mental stress, strain, and anguish. He also alleged that many prisoners had been disciplined for refusing to live in an integrated cell.

The magistrate judge held a Spears[1] hearing, at which Crawford contended that forced integration was unconstitutional. He insisted that the policy violated the consent decree in Lamar v. Coffield,[2] which, he contended, only applied to inmates who desired to be integrated. He argued that this policy was constitutionally barred because it was not specified in his sentence and that, as the integration rule was not posted, inmates could not be

---

[1] Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

[2] See Ruiz v. Estelle, 650 F.2d 555, 570 (5th Cir. 1981) for reference.

disciplined for refusal to live in an integrated cell.

Crawford testified that he was not presently in an integrated cell because he was under racial restriction by the department. He also testified that he had not been forced to reside with a black inmate but that he had been damaged by the policy because prison officials could change his racial restriction at any time.

Warden Charlie Streetman testified that the prison's policy is to assign an inmate to the first available cell randomly, based on the inmate's height, weight, medical and other restrictions; and that race is not taken into consideration unless a racially-motivated incident prompts a racial restriction. Streetman stated that any inmate who refuses to comply with his cell assignment is disciplined for refusal to obey an order; and that if a conflict develops between inmates who are housed in the same cell, either one may be moved to the next available cell.

The magistrate judge recommended that Crawford's suit be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The magistrate judge held that a prison policy of inmate integration is not unconstitutional, and that Crawford, a Caucasian, did not have standing because he had not been required to share a cell with a black inmate.

Crawford filed objections to the magistrate judge's recommendation, alleging that (1) he was presently housed with an inmate of another race, (2) racial violence had increased almost every day since the policy was instituted, requiring frequent lockdowns, and (3) a racial incident occurred on September 3, 1992,

when the "hoe squads" at the Hughes Unit engaged in a "racial fight" during which inmates hit each other with hoes. Crawford contended that being required to live in a cell with a person of another race was not part of his sentence. He argued that the prison was required by the Eighth Amendment to protect inmates from one another and not provoke violence through forced integration. He also argued that prison officials did not post the rule about integration as required to give inmates notice that they could be disciplined for refusing to integrate.

The district court considered Crawford's objections, conducted a de novo review, adopted the magistrate judge's findings and recommendation, and dismissed Crawford's suit for failure to state a claim. The court held that Crawford did not have a constitutional right to be free from forced integration in prison, and that he had not stated a claim for a due process or Eighth Amendment violation. The court held further that Crawford made only conclusionary allegations of racial violence, and that Crawford's reference to one incident of racial hostility was insufficient to state a constitutional claim of failure of the prison to protect him from a constant threat of violence. And the court also held that desegregation of prison cells was within the terms of confinement ordinarily contemplated by a prison sentence and did not violate due process. Crawford filed a Fed. R. Civ. P. 59(e) motion for reconsideration, which the district court denied, so Crawford timely appealed.

II

ANALYSIS

A. Standard of Review

A 28 U.S.C. § 1915(d) dismissal is reviewed for abuse of discretion.[3] Denton v. Hernandez, ____ U.S. ____, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992). A district court may dismiss an in forma pauperis complaint if it is frivolous, that is, if it lacks an arguable basis either in law or in fact. Id.

B. Forced Integration

Crawford argues that he has a constitutional right not to be housed in an integrated cell and that the defendants' policy violated the consent decree in Lamar v. Coffield. Racial segregation in prisons is unconstitutional, except to the extent necessary for prison security and discipline. Lee v. Washington, 390 U.S. 333-34, 88 S.Ct. 994, 19 L.Ed.2d 1212 (1968). We have previously rejected a prisoner's claim that racial integration violated his First Amendment right to free exercise of his religion. Creel v. Hale, No. 92-8666 (5th Cir. May 6, 1993) (unpublished; copy attached). Crawford has no constitutionally

---

[3] Although the district court stated that it was dismissing this case for failure to state a claim under Fed. R. Civ. P. 12(b)(6), Crawford filed his suit IFP, and it was dismissed before service of process on the defendants and after a Spears hearing. Properly, it constituted a dismissal under § 1915(d). We have recently discussed the difference between dismissals under § 1915(d) and Rule 12(b)(6). See Jackson v. City of Beaumont, 958 F.2d 616, 618-19 (5th Cir. 1992). As the authority of the district court to dismiss such a case sua sponte under Rule 12(b)(6) without a motion from the defendants is not clear, we review this case as though it had been dismissed under § 1915(d).

protected interest in a racially segregated cell assignment based solely on his desire not to be assigned to an integrated cell.

Crawford's argument that the prison is violating the consent decree in Lamar v. Coffield because it only required consensual integration is without merit. We have rejected a policy of integration by choice of the prisoners as unconstitutional in Jones v. Diamond, 636 F.2d 1364, 1373 (5th Cir.) (en banc), cert. dismissed, 453 U.S. 950 (1981), overruled on other grounds, International Woodworkers of America v. Champion Int'l Corp., 790 F.2d 1174 (5th Cir. 1986) (en banc). Crawford's claim that the policy of forced integration, in itself, is a violation of his constitutional rights has no basis in law. The district court did not abuse its discretion in dismissing this claim.

C. Protection from Violence

Crawford also argues that the integration policy has resulted in an increase in violence, from which the prison officials have a constitutional duty to protect him. The Eighth Amendment does provide prisoners the right to reasonable protection from injury at the hands of other inmates. Johnston v. Lucas, 786 F.2d 1254, 1259 (5th Cir. 1986). To establish liability under the Eighth Amendment for failure to protect an inmate from harm by other inmates, the complainant must show deliberate indifference by prison officials. Id. at 1260.

Although Crawford alleged a ten-fold increase in violence at the prison, with racially-motivated violence occurring every day, he supports that conclusional statement by citing only the one

incident involving the hoe squad. He did not allege that he was ever the victim of racially-motivated violence or that he was ever threatened with violence. Whether Crawford has a claim for mental injury alone based on the stress and strain of fear of violence is an issue that we have not decided. See Smith v. Aldingers, ___ F.2d ____ (5th Cir. Aug. 27, 1993, No. 93-8081). As the instant case may be decided without such a determination, though, we need not and therefore do not address this issue.

Instead, we affirm the district court's decision that Crawford's allegations of violence are conclusionary, with no factual support, other than a single incident, to show "a pervasive risk of harm" or "failure to take reasonable steps to prevent the known risk." See Stokes v. Delcambre, 710 F.2d 1120, 1125 (5th Cir. 1983). He has alleged no particular facts to support his claim that the violence in question is racially motivated or that it results from the integration policy.

As for asserting the rights of all the inmates of TDC for any mental or physical injuries they may have suffered, Crawford has no standing. See Warth v. Seldin, 422 U.S. 490, 498-99, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) (plaintiff must assert his own legal rights and interests and cannot rest his claim on the rights and interests of others).

We conclude that Crawford's claim for failure to protect has no basis in fact. The district court did not abuse its discretion in dismissing that claim.

D. Integration Not Part of His Sentence

Crawford cites Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989) in arguing that he cannot be forced to live in an integrated cell because it is not part of his sentence. The Thompson Court stated that "as long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight." 490 U.S. at 460-61. Integration of cells is not "otherwise violative of the Constitution." The issue is whether integrated cells are a condition of confinement which "is well within the terms of confinement ordinarily contemplated by a prison sentence." Id. at 461. Here, the district court held that integrated cells were such a condition of confinement. This is necessarily a correct conclusion, considering that Lee v. Washington held that segregation is unconstitutional. It follows that cell integration is not "punishment" at all, and thus has no reason to be mentioned in a criminal sentence at all.

E. Due Process - Notice of Disciplinary Rule

Crawford next argues that inmates were disciplined without proper notice for refusing integrated cell assignments. Due process requires that prison regulations define offenses with such definitiveness that persons of ordinary intelligence can understand what conduct is proscribed. Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983). We have applied this

principle in the prison setting. See Holmes v. Lynaugh, No. 91-2909 (5th Cir. Sept. 17, 1992) (unpublished; copy attached). "Because `legalistic wrangling' over the meaning of prison rules `may visibly undermine the [prison] administration's position of total authority,' federal courts have deferred to the interpretation of those rules by prison authorities `unless fair notice was clearly lacking.'" Adams v. Gunnell, 729 F.2d 362, 369 (5th Cir. 1984) (citation omitted).

The prison regulation which Crawford alleges that the inmates were disciplined under was "failure to obey an order." Warden Streetman testified that refusal to obey an order is the rule applied when an inmate refuses his cell assignment. Crawford does not allege insufficient notice of that regulation. Rather, he argues that the inmates should have been specifically notified that they could be disciplined for refusing a cell assignment on the basis of race. He neither cites authority nor explains why the general rule that a prisoner will be disciplined for failure to obey an order when he refuses a cell assignment for any reason was not sufficient notice.

The district court did not address this particular claim. It is unnecessary, however, for us to decide whether the general rule provides sufficient notice. Crawford did not allege that he was ever disciplined for failure to accept a cell assignment due to race. His allegations are all phrased in terms of "a lot of inmates" and "some" inmates. His brief refers to "about one hundred thousand cases," but does not allege that he was the

subject of any of these disciplinary cases. He makes no allegation that he himself has been injured by this lack of notice. Crawford has no standing to raise this issue on behalf of other inmates. Warth, 422 U.S. at 498-99. Thus Crawford's own claim has no basis in fact, and was properly dismissed as frivolous under § 1915(d).

F. Access to Courts

Crawford's final argument is that the district court did not rule on his claim that prison officials took away his typewriter, thereby denying him access to the courts. He also alleges that his legal mail was destroyed or not mailed.

Crawford filed a pleading in the district court which he labeled "Motion to Provide Plaintiff with a Meaningful Access to the Courts." In it he alleged that prison officials take away his typewriter and lock him up every time he has a legal action pending, which has resulted in the dismissal of one of his cases. He also alleged that he was required to work in the field in violation of his medical restriction.

The district court did not rule on this "motion." Crawford did not make these allegations in his complaint or in an amended complaint. Even assuming that this motion can be considered an amended complaint, he never advanced these issues at his Spears hearing. Therefore, they were not properly before the district court. See Riley v. Collins, 828 F.2d 306, 307 (5th Cir. 1987) (allegations at Spears hearing supersede allegations of complaint). If Crawford wishes to pursue these claims, he must do so in a separate suit. His allegations regarding his legal mail are made

for the first time on appeal and will not be considered. See United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990).

G. Motion for Class Certification

Crawford has filed a motion for class certification in this court. Considering our disposition of this case, this motion is denied as moot.

H. Sanctions

We note that Crawford has filed two previous frivolous appeals, Crawford v. Copeland, No. 91-5637 (5th Cir. Feb. 24, 1992) (unpublished; copy attached) and Crawford v. Copeland, No. 91-5788 (5th Cir. Aug. 20, 1992) (unpublished; copy attached) (warned that further frivolous appeals may subject him to sanction). We now put him on notice that any further appeals to this court which are determined to be frivolous or without merit shall produce sanctions.

AFFIRMED.