

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8378
Summary Calendar

GUS PUENTE,

Plaintiff-Appellant,

VERSUS

CHARLES DAVIS, Supply Officer, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W-92-CA-332)

(February 28, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Puente, a Texas state prisoner, made claims under 42 U.S.C. § 1983 against Davis, supply officer of the prison commissary, for race discrimination and retaliation, and against Captain Parker, who presided over his disciplinary hearing, for retaliation.² The district court dismissed for failure to state a claim. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

² Appellant argues that Parker was also guilty of race discrimination but he did not allege this in the district court. He did raise an issue of cruel and unusual punishment below but he does not address it on appeal.

We accept well-pleaded facts as true and view them in Appellant's favor. Basically, Puente alleges that Davis refused to serve him in the commissary because of his race, and that Davis filed a disciplinary charge against him in retaliation for his filing a grievance against Davis. Puente also alleges that Parker retaliated against him by finding him guilty at the disciplinary hearing and punishing him.

To support his discrimination claim, Appellant must allege facts showing that the act (failure to serve him) was done for a racially discriminatory purpose. Larry v. White, 929 F.2d 206, 209 (5th Cir. 1991), cert. denied, 113 S.Ct. 1946 (1993). The evidence at the Spears hearing indicated that Puente violated a prison rule concerning making purchases in the commissary and that was the reason he was not served. It also showed that Davis had a profit motive to serve as many inmates as possible in a single day so there was no reason for him to arbitrarily refuse Appellant. Appellant himself admitted that he did not abide by the prison rule concerning purchases. The rule was a reasonable one designed to make operation of the commissary more efficient. There is not alleged a reason why Davis would arbitrarily deny service to any inmate based on race. Looking to the well-pleaded facts we do not see that a discriminatory purpose has been pleaded. Davis may not have handled the situation well, but that does not show a § 1983 violation.

To allege a retaliation claim, Puente must allege the existence of a liberty interest in his use of the prison grievance

procedures so that retaliation against him for use of those procedures would state a claim. He has not alleged such a liberty interest and our research has failed to disclose one. We do not decide whether or not the grievance procedures of the prison create a liberty interest. We simply hold that none is alleged and we do not find where one has been declared.

AFFIRMED.