UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8651
Summary Calendar

JEAN-CLAUDE RINEHART,

Plaintiff-Appellant,

VERSUS

JACK GARNER, Warden, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W-93-CA-145)

(May 16, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant Rinehart, a Texas Department of Criminal Justice inmate, filed this pro se, in forma pauperis, civil rights action against the warden and certain officers of the Hughes Unit alleging that a "shakedown" search of all of the cells in his building was ordered by the defendants and that, during that search, his combination lock, several personal items, and some legal materials were destroyed. He alleges that the defendants' actions violated prison regulations, state law, and the Ruiz consent decree, deprived him of his property without due process of law, and denied

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

him access to the courts.

The magistrate judge held a Spears'[2] hearing and concluded that Rinehart's complaint should be dismissed pursuant to § 1915(d) because: (1) none of the defendants had been personally involved in the actions challenged by Rinehart;[3] (2) the search of Rinehart's cell was well within the discretionary authority of prison officials; and (3) Rinehart had not been denied access to the courts or suffered any actual injury.

Rinehart objected and the district court partially adopted the report and recommendation of the magistrate judge and dismissed the complaint as frivolous.

A district court may dismiss an IFP complaint as frivolous under § 1915(d) if it lacks an arguable basis in law or fact. Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). We review for abuse of discretion. Id.

Under § 1983, supervisory officials are not liable for subordinates' actions on any theory of vicarious liability. A supervisor may be held liable if there exists either 1) personal involvement in the constitutional deprivation, or 2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. Supervisory liability exists even without personal participation if the supervisory official

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

[3] The Magistrate Judge did, however, state that the instant § 1915(d) dismissal should be without prejudice, so that when and/or if Rinehart is able to determine which prison officials were actually involved in the complained-of actions, he should not be precluded from re-filing a § 1983 complaint.

implements a policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation. Thompkins v. Belt, 828 F.2d 298, 303-04 (5th Cir. 1987).

Rinehart has not alleged the personal involvement of any defendant. His sole allegation regarding defendants' involvement is that the order for the shakedown had to have "come from the top," because the shakedown involved the entire building.

As prisoners enjoy no Fourth Amendment protection against unreasonable searches in their prison cells, Hudson v. Palmer, 468 U.S. 517, 526, 528-29, (1984), ordering such a shakedown is not constitutionally proscribed conduct for a prison official. The actions forming the basis of Rinehart's complaint)) the cutting of his lock and destruction of his personal property and legal materials)) were allegedly perpetrated by those officers who carried out the search, and not those supervisors who ordered it.

Rinehart also fails to allege that there was a policy implemented by the defendants which caused a constitutional violation. Thompkins, 828 F.2d at 303-04. In fact, Rinehart "admits the need for shakedowns as stated in the TDCJ-ID handbook."

Therefore, as the defendants were neither personally involved in the alleged deprivations, nor casually connected to them, and as Rinehart does not contend that there is an unconstitutional prison policy implemented by the defendants, the district court did not abuse its discretion by dismissing the complaint as frivolous under § 1915(d).

AFFIRMED.