

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8877  
Summary Calendar

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GERALD WAYNE WILSON,

Plaintiff-Appellant,

VERSUS

ECTOR COUNTY JAIL, et al.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
(M0-92-CA-160)

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(July 22, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

Gerald Wilson appeals the dismissal of his prisoner's civil rights claim brought pursuant to 42 U.S.C. § 1983. We affirm in part, vacate in part, and remand.

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\* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Wilson is incarcerated in the Hughes Unit of the Texas Department of Criminal Justice (TDCJ) in Gatesville, Texas. Proceeding pro se and in forma pauperis (IFP), he filed the instant civil rights action alleging a myriad of constitutional violations stemming from the physical conditions of the Ector County jail, where he previously was incarcerated. His complaint also alleged that the defendants at the Ector County jail tampered with his legal mail.

The district court ordered Wilson to amend his complaint in order to plead more specific facts and, in the same order, denied his request for appointed counsel. Wilson complied with the district court's order by filing an amended complaint. The magistrate judge then recommended granting the defendants' motion to dismiss on Wilson's claim for injunctive relief and his allegation that the defendants tampered with his legal mail, and granting the defendants' motion for summary judgment on Wilson's claim regarding the conditions of his confinement at Ector County jail. The district court, over Wilson's objections, adopted the magistrate judge's report and recommendation, granted the defendants' motion for summary judgment, and dismissed the complaint.

II.

A.

The district court granted the defendants' motion to dismiss for failure to state a claim upon which relief may be granted under

FED. R. CIV. P. 12(b)(6) as to Wilson's claim of mail tampering. Such dismissals are reviewed de novo on appeal. Giddings v. Chandler, 979 F.2d 1104, 1106 (5th Cir. 1992). A dismissal under rule 12(b)(6) will be upheld on appeal "if it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations." Id. (internal quotations and citation omitted).

Wilson contends that the defendants opened his incoming legal mail while he was not present. Allegations that prison officials tampered with his incoming legal mail implicate the right of access to the courts and the right to free speech. Walker v. Navarro County Jail, 4 F.3d 410, 413 (5th Cir. 1993).

Because he failed to allege that his position as a litigant was prejudiced, however, Wilson has not stated a cognizable constitutional claim that he was denied access to the courts. Id. Likewise, in light of the legitimate security interests served by opening and inspecting inmate mail, Wilson's allegation that his legal mail was opened, but not censored, outside of his presence does not rise to the level of a constitutional violation. Id. This claim was properly dismissed under rule 12(b)(6).

Wilson also asserts that prison officer Claudia Breta refused to notarize legal documents for him. Although he did make this claim in his complaint, Breta was not named as a defendant, and the district court did not address this allegation in its order dismissing Wilson's complaint. Liberally construed, Wilson's allegation could also implicate his right of access to the courts.

This right includes his ability to prepare and transmit necessary legal documents to the courts. See Brewer v. Wilkerson, 3 F.3d 816, 821 (5th Cir. 1993), cert. denied, 114 S. Ct. 1081 (1994). In order to make such a claim, however, Wilson must allege an element of legal prejudice. Id. at 826. He has not done so. He therefore has failed to state a cognizable constitutional violation. See id.

B.

Wilson also appeals the district court's grant of the defendants' motion for summary judgment regarding his challenge to the conditions of his confinement at the jail. Under FED. R. CIV. P. 56(c), summary judgment is appropriate if, "viewing all the evidence in the light most favorable to the non-movant, there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Amburgey v. Corhart Refractories Corp., 936 F.2d 805, 809 (5th Cir. 1991) (internal quotations and footnote omitted).

Wilson alleges, and the defendants acknowledge, that Wilson was in the jail as a pretrial detainee and not as a convicted prisoner. Pretrial detainees are protected by the Fourteenth Amendment's Due Process Clause, not the Eighth Amendment's prohibition against cruel and unusual punishment, see Cupit v. Jones, 835 F.2d 82, 85 (5th Cir. 1987), and cannot be subject to conditions of confinement that amount to punishment, see Parker v. Carpenter, 978 F.2d 190, 192 (5th Cir. 1992). Action or inaction related to a pretrial detainee is considered punishment unless it

is reasonably related to a legitimate governmental objective. Id.

In his complaint and other submissions to the district court, all of which were made under penalty of perjury and are therefore considered competent summary judgment evidence, see 28 U.S.C. § 1746; Nissho-Iwai Am. Corp. v. Kline, 845 F.2d 1300, 1306 (5th Cir. 1988) (internal quotation marks and citations omitted), Wilson alleges that the overcrowding at the jail caused substandard living conditions; that inmates are not screened for health problems; that the wood in cellblock 2-N is a fire hazard; that blankets are never changed or washed and sheets are not issued; that food is served at improper temperatures, there are "flakes" on the trays, hair in the food and trash in the ice; and that the sewage outlet is always dirty in the detox tank.

The defendants submitted affidavits from Ector County jail personnel attesting to the satisfactory conditions at the jail. The district court concluded that Wilson had not provided competent summary judgment evidence in response and therefore granted the defendants' motion. Wilson's assertions made under penalty of perjury, directly contradict the evidence submitted by the defendants, e.g., defendants' affidavits contradicting Wilson's sworn assertions that blankets are not washed or replaced and that food contains hair and ice is mixed with trash). As these contradictions create a genuine issue of material fact regarding the physical conditions at the jail, the district court erred by granting summary judgment on this issue. This portion of the district court's order must be VACATED and the cause REMANDED for

further proceedings. In all other respects, the judgment is  
AFFIRMED.