IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-10105
Summary Calendar

JORITA HAGINS,

Plaintiff-Appellant,

versus

D.L. "SONNY" KEESE, Sheriff of Lubbock
County, TX, ET AL.

Defendants,

D.L. "SONNY" KEESE, Sheriff of Lubbock
County, TX, ET AL.

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas
(5:93-CV-119-C)

(August 29, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:[*]

Jorita Hagins appeals the dismissal of her § 1983 complaint and we affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I

Jorita Hagins, an inmate at the Gatesville Unit of the Texas Department of Criminal Justice, Institutional Division ("TDCJ-ID"), originally filed this action pro se and in forma pauperis ("IFP") against various present and former officials of Lubbock County, Texas, (the "Lubbock defendants") and James A. Collins, Director of TDCJ-ID and S. O. Woods, Chairman of the TDCJ-ID Classification Committee, alleging that the defendants had placed and maintained false information in her file concerning her offense of conviction and her conduct in the Lubbock County jail. She further alleged that this information had precluded her from being paroled on six occasions, being granted furlough, or receiving State Approved Trustee ("SAT") status while in prison. She sought to have the allegedly false information removed from her file, legal fees, and $1,500,000 in monetary damages.

The district court concluded that Hagins's complaint should be construed as a petition for writ of habeas corpus and Hagins was directed to show cause why the petition for writ of habeas corpus should not be dismissed for failure to exhaust. Hagins responded that she had filed this action as one seeking relief under section 1983, not a petition for writ of habeas corpus. She requested that the court dismiss any matters that should have been pursued in a petition for habeas corpus relief. In his report and recommendation, the magistrate judge granted this request and determined that Hagins's claims for damages against the Lubbock

defendants were properly within the confines of 42 U.S.C. § 1983.

The district court adopted the report and recommendation and dismissed the habeas corpus portions of Hagins's complaint. The court concluded that Hagins still had a civil rights complaint for monetary damages against the Lubbock defendants and maintained it on the docket. By separate order dated over one month later, the district court dismissed Hagins's action against the Lubbock defendants as frivolous under § 1915(d). Hagins timely appealed from that judgment.

II

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). Such dismissals are reviewed on appeal for abuse of discretion. Id.

Hagins's claim that the Lubbock defendants placed erroneous information in her file resulting in her inability to get parole or furlough or SAT status must fail, as she has not established the deprivation of a constitutional right, which is a prerequisite to recovery under § 1983. See Thomas v. Torres, 717 F.2d 248, 249 (5th Cir. 1983).

Under Texas law, which defines Hagins's liberty interest in parole release, see Gilbertson v. Texas Board of Pardons & Paroles, 993 F.2d 74, 75 (5th Cir. 1993), there is no constitutionally protected liberty interest in a tentative parole date or other parole-release matter. Id. Nor does Hagins possess a protected

liberty interest in furlough. See Morris v. McCotter, 773 F. Supp. 969, 971-72 (E.D. Tex. 1991). Still further, Hagins has failed to identify any statutory language creating such an interest in a particular SAT status or job assignment. Therefore, there is no due process violation resulting from the prison authorities' reliance on the information in Hagins's file to deny her parole, furlough, or SAT status.

Hagins also contends that this use of the information in her file constitutes a violation of her equal protection rights under Tex. Code Crim. P. 42.12 § 15(b). This provision, however, relates to restitution for crime victims who cannot be located, and bears no relationship to the issues presented by Hagins's complaint. Hagins is also not entitled to recovery under § 1983 based on her allegations of emotional distress and mental anguish because such damages are only recoverable upon proof of an "actual injury caused by the denial [her] constitutional rights." Memphis Community School District v. Stachura, 477 U.S. 299, 307 (1986).

As Hagins's allegations against the Lubbock defendants have no basis in law or fact, and the legal theory upon which the complaint relies is "indisputably meritless," Neitzke v. Williams, 490 U.S. 319 (1989), the district court did not abuse its discretion in dismissing the complaint as frivolous under § 1915(d).[1]

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[1] Hagins also moves this court for production of certain documents and to "compile exhibits." This court "will not ordinarily enlarge the record on appeal to include material not before the district court," United States v. Flores, 887 F.2d

## III

For the foregoing reasons, the judgment is

A F F I R M E D.

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543, 546 (5th Cir. 1989)(citations omitted), so these motions are denied.