IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10631
Conference Calendar

RICHARD EDWARD MCCOY,

Plaintiff-Appellant,

versus

JAMES A. LYNAUGH, Director,
Texas Dep't of Criminal Justice, ET AL.

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:93-CV-120

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(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Richard Edward McCoy argues that the district court abused its discretion by dismissing the suit. A district court may dismiss a pauper's complaint as frivolous when the complaint lacks an arguable basis either in law or in fact. This Court will disturb such a dismissal only on finding an abuse of discretion. Denton v. Hernandez, ____ U.S. ____, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992).

To prevail on his claims that he was wrongfully denied consideration for parole by the parole board, McCoy would have to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

show that he was denied a liberty interest without due process. As a Texas inmate, McCoy has no liberty interest in parole and is "not entitled to reasons" for the denial of parole. Gilbertson v. Texas Bd. of Pardons and Paroles, 993 F.2d 74, 74-75 (5th Cir. 1993). McCoy asserts that he had a tentative parole date of November 1992. He was not released at that time, he has not had a parole hearing, he was not given a new tentative parole date, and he has not been given any reasons for any of these actions. The Texas statute does not mandate that he receive reasons for not being paroled or having his tentative parole date changed. Gilbertson, 993 F.2d at 75; Tex. Crim. Proc. Code Ann. § 8(e) (West 1994). Although not stated in Gilbertson, the Texas statute also provides that the parole board "may have the prisoner appear before it and interview him." Tex. Crim. Proc. Code Ann. § 8(f)(5) (West 1994) (emphasis supplied). This is the same type of permissive statutory language that Gilbertson held "precludes the creation of a liberty interest." Gilbertson, 993 F.2d at 75. Additionally, the Texas statute does not mandate parole hearings, but provides that "[i]f a hearing is held, the parole panel shall allow a victim . . . or a representative of a victim . . . to provide a written statement." Tex. Crim. Proc. Code Ann. § 8(f)(2) (West 1994). This is also permissive language that does not create a liberty interest for the prisoner. As such, none of McCoy's allegations show a denial of due process. McCoy's claims lacked an arguable basis in law. The district court's dismissal of his claims was not an abuse of discretion. See Denton, 112 S. Ct. at 1733-34.

Mccoy also argues that the district court did not address his claims that the parole board treats prisoners convicted of nonaggravated crimes differently from those convicted of aggravated crimes and that the parole board has retaliated against him because he is a writ writer. Although the district court did not specifically address these claims, their dismissal as frivolous may be upheld. See Bickford v. International Speedway Corp., 654 F.2d 1028, 1031 (5th Cir. 1981).

With respect to the first claim, there is no basis for an equal protection claim because the alleged disparate parole treatment is based on differences in the offenses of conviction. "[A] violation of equal protection occurs only when the government treats someone differently than others similarly situated. . . ." Brennan v. Stewart, 834 F.2d 1248, 1257 (5th Cir. 1988).

With respect to the second claim, it is well settled that an inmate may not be retaliated against because he exercises his right to access to the courts. Gibbs v. King, 779 F.2d 1040, 1046 (5th Cir.), cert. denied, 476 U.S. 1117 (1986). However, if the conduct claimed to constitute retaliation would not, by itself, raise the inference that such conduct was retaliatory, the assertion of the claim itself without supporting facts is insufficient. Whittington v. Lynaugh, 842 F.2d 818, 819 (5th Cir.), cert. denied, 488 U.S. 840 (1988). McCoy provided no facts to suggest that his treatment by the parole board was in any way connected to his legal activities.

AFFIRMED.