

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10752
USDC No. 4:93-CV-500-A

ULYSSES LEE LAUDERDALE,

Plaintiff-Appellant,

versus

JOHN DOE ENNIS, Law
Enforcement Officer
Tarrant County Sheriff, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas

- - - - -
(December 15, 1994)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that appellant Ulysses Lee Lauderdale's motion for leave to appeal in forma pauperis (IFP) is DENIED.

Lauderdale has failed to present a nonfrivolous issue on appeal.

See Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982).

A court may dismiss a claim as factually frivolous only if the facts alleged are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional. See Denton v. Hernandez, ____ U.S. ____, 112 S. Ct. 1728, 1733-34,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

118 L. Ed. 2d 340 (1992); 28 U.S.C. § 1915(d). A finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them. Id. An IFP complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Id.

Lauderdale's allegations regarding the trustees' conspiracy to harass him with "terroristic death threats" are delusional. See Denton, 112 S. Ct. at 1733-34. Thus, the district court did not abuse its discretion in dismissing this claim as factually frivolous.

Lauderdale's allegation that he was denied food because the trustees tampered with it does not rise to the level of being delusional or irrational; therefore, the district court abused its discretion in dismissing this claim as factually frivolous. Id. However, because Lauderdale's allegations establish that the defendant-jailers merely were negligent in failing to prevent the trustees from tampering with his food, they are insufficient to establish a due process violation. See Salas v. Carpenter, 980 F.2d 299, 307 (5th Cir. 1992). Accordingly, this claim lacks an arguable basis in law and we affirm the district court's judgment on that basis. See Sojourner T. v. Edwards, 974 F.2d 27, 30 (5th Cir. 1992)(court may affirm judgment on any basis supported by the record), cert. denied, 113 S. Ct. 1414 (1993).

Lauderdale's allegation regarding mail-tampering also is not delusional. See Denton, 112 S. Ct. at 1733-34. However, this

claim fails because Lauderdale does not allege that he was unable to transmit a document to the court, nor does he allege a violation of his First Amendment rights. See Brewer v. Wilkinson, 3 F.3d 816, 820 (5th Cir. 1993), cert. denied, 114 S. Ct. 1081 (1994).

Insofar as Lauderdale raises a claim regarding the denial of medication, this claim is deemed abandoned. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993)(claims not adequately argued in the body of the brief are deemed abandoned on appeal).

Lauderdale's requests that "an attorney be assigned the Case at Bar" is DENIED because no "exceptional circumstances" warranting the appointment of counsel are presented by this case. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

Lauderdale's requests that this Court criminally prosecute two of the inmate trustees who were the "main perpatraders [sic] in the illegal scheme" and that this Court invite the Civil Rights Division of the U.S. Department of Justice to intervene in this lawsuit also are DENIED.

APPEAL DISMISSED.