

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10872

Summary Calendar

JOEY ALVIN FRANKLIN,

Plaintiff-Appellant,

versus

MR. ESTES, ET AL.,

Defendants,

MR. ESTES, ET AL.,

Defendants-Appellees.

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

(3:93-CV-1031-X)

March 16, 1995

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Appellant J. Alvin Franklin appeals the district court's dismissal of his § 1983 action against various prison officials.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

We find that the district court properly dismissed the action and, accordingly, affirm.

I.

While housed at the Venus Pre-Release Center awaiting transfer to the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID), Franklin became romantically involved with a female computer instructor. Relationships between staff and inmates are forbidden, and when authorities discovered that Franklin and the instructor had become romantically involved, they initiated an investigation and placed Franklin in administrative segregation to "protect the integrity of the investigation." Franklin was held in segregation at the Venus Center for fourteen days, at which time he was transferred to TDCJ-ID. A formal hearing was held upon Franklin's arrival at TDCJ-ID. At the hearing, Franklin admitted the relationship and admitted that he destroyed some photographs and letters from the instructor because he did not want to get her in trouble. Franklin was convicted of soliciting assistance.

Franklin filed a § 1983 action against five Venus Center employees and three TDCJ-ID employees, claiming monetary damages and injunctive and declaratory relief. The district court dismissed Franklin's requests for injunctive and declaratory relief as moot because Franklin had been released from confinement. The district court then dismissed Franklin's claims against two of the TDCJ-ID employees pursuant to Rule 12(b)(6) and granted summary judgment in favor of four of the Venus Center employees. The court

dismissed Franklin's remaining claims pursuant to 28 U.S.C. § 1915(d).

II.

Although the TDCJ-ID appellees contend otherwise, we have appellate jurisdiction to hear Franklin's appeal. Notices of appeal are liberally construed. United States v. Ramirez, 932 F.2d 374, 375 (5th Cir. 1991). Franklin's notice makes clear that he intended to appeal the dismissal of his entire lawsuit.

Franklin claims that the district court erred by dismissing his claim that one of the Venus Center employees falsified the disciplinary report. In his appellate brief, Franklin alleges that the prison official used the phrase "in public" to characterize Franklin's sexual misconduct when, in fact, no witnesses observed the incident between the computer instructor and Franklin. Inclusion of the phrase "in public" allegedly enhanced the possible rule violation.

Franklin's claim that the prison official falsified the report by adding the phrase "in public" is made for the first time on appeal. Franklin did not provide this factual specificity in his complaint, but only made conclusory allegations that prison officials had falsified reports. Accordingly, the district court did not err in dismissing this claim.

Franklin next claims that the district court erred by dismissing his claim that he was deprived of due process by being placed in administrative segregation without the opportunity to be heard. This claim is without merit. Because the segregation was for a legitimate, non-punitive reason, Franklin was not entitled to

a hearing to determine whether he should be transferred back to TDCJ-ID or whether he should be placed in the general population. See Hewitt v. Helms, 459 U.S. 460, 468 (1983); Mitchell v. Sheriff Dep't, Lubbock County, Tex., 995 F.2d 60, 63 (5th Cir. 1993). In any event, prison officials did provide Franklin with a preliminary hearing three days after placing him in segregation. Furthermore, Franklin was detained, in accordance with prison directives, only during the investigation of his misconduct.

Franklin did not oppose the summary judgment motions and presented no evidence to show that his detention in administrative segregation was intended as punishment. He received notice of the charges against him and an opportunity to present a statement. He has not alleged that he suffered any adverse parole consequences. Accordingly, the judgment of the district court is AFFIRMED.