IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20074

Summary Calendar

JEFFREY HOZDISH,

Plaintiff-Appellant,

v.

THE STATE OF TEXAS, JAMES (JIM) LYNAUGH, and JAMES A. COLLINS, Director TDCJ-ID,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-0034)

(July 26, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Jeffrey Hozdish appeals the district court's dismissal of his complaint pursuant to 28 U.S.C. § 1915(d). Finding no error, we affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

Jeffrey Hozdish, an inmate of the Texas Department of Criminal Justice--Institutional Division (TDCJ), proceeding pro se and in forma pauperis (IFP), filed suit under 42 U.S.C. § 1983 in the United States District Court for the Southern District of Texas. He alleged that he was denied access to the courts and that he was the object of retaliation and discrimination by prison officials. He also alleged a violation of his First Amendment right to practice his religion.

Hozdish's case was referred to a magistrate judge. On May 6, 1993, the magistrate ordered Hozdish to submit a more definite statement of the facts involved in his complaint and requested that Hozdish respond to the specific points and questions which the magistrate had listed so that Hozdish could flesh out his claims. The magistrate also ordered that Hozdish file no further motions until he was so authorized by the court and that any motion filed in violation of the order would be stricken. Hozdish filed a more definite statement on June 3, 1993. During the next few months, without authorization from the court, Hozdish also filed numerous motions, all of which were ordered stricken on December 29, 1993.

After reviewing Hozdish's original complaint and his more definite statement, the district court dismissed Hozdish's claims, with prejudice, as frivolous under § 1915(d). The court, noting that Hozdish had filed numerous other cases in federal district court concerning the same or similar issues, ordered

that Hozdish be sanctioned $50 for his repeated abuse of the judicial system and directed the clerk of the court to refuse to accept for filing any more IFP cases by Hozdish unless all sanctions had been paid or unless Hozdish had been given special permission by a magistrate or district court judge. This appeal followed.[1]

II.

A district court may dismiss as frivolous an IFP complaint because it lacks an arguable basis in law or fact.[2] Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993); see Neitzke v. Williams, 490 U.S. 319, 325 (1989). "Dismissal with prejudice [is] . . . appropriate if the plaintiff has been given an opportunity to expound on the factual allegations . . . but does not assert any facts which would support an arguable claim." Graves v. Hampton, 1 F.3d 315, 319 (5th Cir. 1993).

"District courts are vested with especialy broad discretion

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[1] Hozdish does not challenge on appeal the district court's sanction order.

[2] We note that the district court stated that a claim may dismissed as frivolous under § 1915(d) "when the claim has no arguable basis in law and fact, or has no realistic chance of ultimate success." However, a district court may no longer dismiss a claim as frivolous because the court concludes that its "realistic chance of ultimate success is slight." Booker v. Koonce, 2 F.3d 114, 116 (5th Cir. 1993). Although the standard upon which the district court presumably relied has been abrogated, the district court's dismissal need not be disturbed if the claims that Hozdish pursues on appeal lack an arguable basis in law or fact. See Sojourner T. v. Edwards, 974 F.2d 27, 30 (5th Cir. 1992) (explaining that a court may affirm judgment on any basis supported by the record), cert. denied, 113 S. Ct. 1414 (1993).

in making a determination of whether an IFP proceeding is frivolous." Green v. McKaskle, 788 F.2d 1116, 1119 (5th Cir. 1986). We review a dismissal under § 1915(d) for an abuse of discretion. Graves, 1 F.3d at 317.

III.

A.

Hozdish first argues that the district court erred by dismissing his claims without a hearing. He asserts that he mistakenly contacted the Federal Bureau of Investigation instead of the United States Post Office regarding "lost mail" and was not allowed to amend his complaint "to relieve that part."

Although Hozdish did not file a motion to amend his complaint to reflect whatever "lost mail" he might be referring to, leave to amend his complaint was not necessary in light of the fact that Hozdish was allowed to file a more definite statement in order to plead his "best" case. See Jacquez v. Procunier, 801 F.2d 789, 793 (5th Cir. 1986). Moreover, a district court is not required to conduct a hearing before dismissing an IFP complaint as frivolous. See Green, 788 F.2d at 1120. Hozdish was given ample opportunity to answer the magistrate's specific questions and thus flesh out his claims in his more definite statement. See Graves, 1 F.3d at 319. Hence, Hozdish's argument is without merit.

B.

Hozdish also contends that his right of access to the courts was violated because TDCJ officials, including a prison chaplain, inhibited his communication with his children,[3] communication which would have allowed him to "obtain affidavits pursuant to 11.59 of the Article of ha[]beas corpus of the Texas Code of Criminal Procedure." He also contends that TDCJ officials inhibited his communication with a fellow writ-writing prisoner.

Although a prisoner has a right of access to the courts, that right has not been extended to encompass more than the ability of an inmate to prepare and transmit a necessary legal document to the court. Brewer v. Wilkinson, 3 F.3d 816, 821 (5th Cir. 1993), cert. denied, 114 S. Ct. 1081 (1994). Because Hozdish's right of access to the courts does not include the right to communicate with his children or his fellow inmates, his argument is meritless.

C.

Hozdish also argues that he was "targeted" because he was a "writ writer" and that TDCJ officials reassigned him from working in the law library to working as an orderly in administrative segregation. He also argues that he sought, but was not given, a clerical position.

Prison officials may not retaliate against an inmate because he exercises his right of access to the courts. Gibbs v. King,

[3] In its order dismissing Hozdish's claims, the district court notes that Hozdish's children were the victims of his three sexual abuse convictions.

779 F.2d 1040, 1046 (5th Cir.), cert. denied, 476 U.S. 1117 (1986). However, this court has not determined whether an inmate has a constitutional right to be free from retaliation for his legal activities on behalf of other inmates. See Chambers v. Wackenhut, No. 92-4817 (5th Cir. August 30, 1993) (unpublished). We need not resolve this issue, however, for even with the benefit of Hozdish's more definite statement, Hozdish's allegations are wholly devoid of any facts linking his job change to his legal activities and thus do not give rise to even an inference of retaliation. His argument is therefore without merit. See Whittington v. Lynaugh, 842 F.2d 818, 819 (5th Cir.), cert. denied, 488 U.S. 840 (1988).

D.

Hozdish further contends generally that TDCJ officials promoted "building tenders" or prison informants who were allowed to harass other inmates and who acquired information about the legal activities of other inmates so that these other inmates could be targeted for retaliation. He also argues generally that black inmates are allowed to harass other inmates because the TDCJ rules and regulations are not enforced against them.

Although prison officials may violate a prisoner's Eighth Amendment rights by being deliberately indifferent to a prisoner's need to be protected from other inmates, see Wilson v. Seiter, 111 S. Ct. 2321, 2323, 2326-27 (1991), Hozdish does not allege that he was the object of any specific incident or harassment or that he was harmed in any way by TDCJ officials'

failure to protect him from other inmates. Hence, his argument is meritless.

E.

Further, Hozdish argues that TDCJ employs a "state regulated religion which seek[s] extra-judicial confessions and retaliate[s] when they do not get them." He contends that his First Amendment right of freedom of religion was thus violated because "religious indoctrination is used to persuade inmates to waive their civil rights to prohibit habeas corpus in [lieu] of prison [amenities] (visits, family support, mail and[]craft support)."

An inmate retains First Amendment protection to exercise freely his religious beliefs. O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1992). Hozdish has alleged no facts or even made an inference to support an assertion that he was not able to exercise freely his religious beliefs. His First Amendment claim is thus without merit.

F.

Hozdish also generally contends that TDCJ officials disregard the Ruiz[4] decree and unspecified TDCJ regulations. A violation of a remedial decree, such as the Ruiz decree, alone does not provide a cause of action under § 1983. Green, 788 F.2d at 1123. Similarly, a violation of TDCJ rules, without more,

[4] Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980), aff'd in part, vacated in part, 679 F.2d 1115 (5th Cir.), amended in part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983).

does not give rise to a federal constitutional claim. Hernandez v. Estelle, 788 F.2d 1154, 1158 (5th Cir. 1986). Hozdish's contentions are meritless.

G.

Construing Hozdish's brief most liberally, we also note that Hozdish argues on appeal that conditions of his confinement--i.e., placing him in a "hostile environment contrary to his health restrictions" and exposing him to "noise pollution" caused by loud inmates and televisions--violated the Eighth Amendment's proscription against cruel and unusual punishment. He also argues that TDCJ officials are guilty of peonage, i.e., involuntary servitude, in violation of 18 U.S.C. § 1581. However, Hozdish failed to raise these claims in the district court in either his original complaint or in his more definite statement. We therefore decline to address them on appeal. See Blackmon v. Scott, 22 F.2d 560, 563 (5th Cir. 1994); Oliver v. Collins, 914 F.2d 56, 60 (5th Cir. 1990).

IV.

For the foregoing reasons, we AFFIRM the judgment of the district court.