IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20177
USDC No. CA H 92-1324

WILLIAM MICHAEL MASON,

Plaintiff-Appellant,

versus

JOHNNY KLEVENHAGEN,

Defendant-Appellee.

- - - - - - - - - - -
Appeal from the United States District Court
for the Southern District of Texas
- - - - - - - - - - -
(September 28, 1994)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:[*]

William Michael Mason is not entitled to proceed in forma pauperis (IFP) on appeal of the denial of his 42 U.S.C. § 1983 suit because his appeal does not present a nonfrivolous legal issue. Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986).

Mason argues that he did not receive due process in connection with his transfer to the San Jacinto St. jail. Although he characterizes his confinement at San Jacinto St. as

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"administrative segregation" and "isolation", the conditions which he describes do not conform to his labels.

Pretrial detainees are protected by the Fourteenth Amendment's Due Process Clause. Cupit v. Jones, 835 F.2d 82, 84 (5th Cir. 1987). The proper inquiry under the Due Process Clause is whether conditions accompanying pretrial detention amount to punishment of the detainee, because the Due Process Clause does not permit punishment prior to an adjudication of guilt. Bell v. Wolfish, 441 U.S. 520, 535, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). "[I]f a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to `punishment.'" Id. at 539. Alternatively, an arbitrary or purposeless restriction on a pretrial detainee leads to the inference that the restriction is punitive. See Olgin v. Darnell, 664 F.2d 107, 109 (5th Cir. Dec. 1981). If there is no proof of intent to punish, the Court considers whether the restriction is rationally related to a nonpunitive purpose and whether the restriction appears excessive in relation to that purpose. Block v. Rutherford, 468 U.S. 576, 584, 104 S. Ct. 3227, 82 L. Ed. 2d 438 (1984).

When a restriction is imposed for security reasons, the same standard of review applies whether the decision affects a pretrial detainee or a convicted prisoner. See Rankin v. Klevenhagen, 5 F.3d 103, 106 (5th Cir. 1993). "[S]ecurity-related decisions of prison officials are to be reviewed only for reasonableness; if the decisions are rational (an exceedingly

undemanding standard), courts are to look no further." Thorne v. Jones, 765 F.2d 1270, 1275 (5th Cir. 1985), cert. denied, 475 U.S. 1016 (1986). The fact that "detention interferes with the [pretrial] detainee's understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into `punishment.'" Bell, 441 U.S. at 537.

"Prison administrators [are to be] accorded wide-ranging deference in the adoption and execution of polices and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Id. at 547. The Court does not substitute its judgment on matters of institutional administration and security for that of the persons trained and charged with running the prison. Id. at 548.

Mason's claims concerning the conditions of his confinement during trial do not present a nonfrivolous legal issue because Mason does not allege that the restrictions were imposed as punishment and because the restrictions were a reasonable response to the perceived security threat arising out of Mason's alleged threatening telephone calls to prospective State witnesses. Block, 468 U.S. at 584.

Mason had no due process right to remain in the Franklin St. jail. Olim v. Wakinekona, 461 U.S. 238, 244-45, 103 S. Ct. 1741, 75 L. Ed. 2d 813 (1983) (convicted prisoner who was a security risk had no due process right to challenge transfer from prison in Hawaii to maximum-security facility in California).

Mason also had no due process right to be assigned to the general prison population. Mitchell, 995 F.2d at 62-63. The imposition of restrictive conditions for a nonpunitive administrative reason did not violate Mason's rights under the Due Process Clause. Id. at 63; see also Green v. Ferrell, 801 F.2d 765, 770 and n.4 (5th Cir. 1986) (In the absence of prohibitory regulations, a pretrial detainee's assignment to restrictive cell conditions for a nondisciplinary reason does not implicate a liberty interest protected by the Fourteenth Amendment.). Mason has not suggested that the transfer to more restrictive confinement violated a liberty interest created by a Texas statute or regulation, and we are not aware of the existence of such an interest. See Mitchell, 995 F.2d at 63; see also Tex. Local Gov't Code Ann. §§ 351.001(b) and 351.041 (West 1988 & Supp. 1994).

Further, the record refutes Mason's conclusional allegation of a total denial of due process. Mason filed a grievance challenging the restrictions imposed, and jail officials promptly returned some of his personal property. His complaints about the restrictive confinement at the San Jacinto St. jail were reviewed by the state trial court. The level of process accorded Mason meets minimum constitutional standards. See Hewett v. Helms, 459 U.S. 460, 457-76, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983).

Mason urges that much of his personal property was confiscated and has not been returned to him. "The Due Process Clause is not implicated by a state official's negligent act causing unintended loss of property . . . and even intentional

destruction of an inmate's property does not raise a constitutional claim if an adequate post- deprivation remedy exists." Simmons v. Poppell, 837 F.2d 1243, 1244 (5th Cir. 1988). Texas provides such a remedy. See Tex. Civ. Prac. & Rem. Code Ann. § 101.021 (West 1986). Mason's claim that his property was confiscated does not allege a constitutional violation and therefore does not present a nonfrivolous appellate issue. See Jackson, 811 F.2d at 261.

Mason alleges that the restrictive conditions of confinement and confiscation of his legal materials compromised his defense at his murder trial because he could not freely communicate with his lawyers, do research, or locate exculpatory witnesses and evidence. This issue is premature because it implicates the constitutionality of Mason's murder conviction, which has not been invalidated. Heck v. Humphrey, ___ U.S. ___, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994). Heck requires the Court to "consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." Id.

Mason's claim that Sheriff Klevenhagen hampered Mason's ability to defend the murder charge is precluded at this time because a judgment in Mason's favor on this issue would necessarily implicate the constitutionality of his murder conviction and he has not demonstrated that the conviction has been invalidated.

Mason argues that the district court should not have dismissed his complaint without ordering that process issue. He also suggests that the district court failed to consider his pleadings under the principles of liberal construction accorded pro se litigants. See Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972).

The dismissal of the complaint prior to service of process was authorized by statute. 28 U.S.C. § 1915(d); see Irving v. Thigpen, 732 F.2d 1215, 1216 and n.2 (5th Cir. 1984). Regardless how the district court analyzed Mason's claims, no error exists because no matter how liberally his pleadings are construed, they do not allege a constitutional violation.

Mason urges that the district court erred by sua sponte ordering that Mason not file any motions without authorization by the court. It is unclear why the district court entered this order; however, Mason does not suggest that he was prejudiced by the order, and he has not identified any motions that he would have filed had the order not been entered.

Mason argues in conclusional terms that Sheriff Klevenhagen ordered his transfer to more restrictive confinement in retaliation for Mason's exercise of his rights under the First and Fourteenth Amendments. Mason did not raise his claim of retaliation, which involves factual issues, in the district court, and this Court thus cannot consider this argument. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Mason's motions to appeal IFP and for appointment of appellate counsel are DENIED. Jackson, 811 F.2d at 261; Ulmer v.

Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). The appeal, which is frivolous, is DISMISSED. 5th Cir. R. 42.2.