

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20180
Summary Calendar

WILLIAM ARTHUR KNIGHT

Plaintiff-Appellant,

v.

STATE OF TEXAS, ET AL.,

Defendants,

STATE OF TEXAS,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
CA H 91 1870

March 20, 1995

Before KING, JOLLY, and DEMOSS, Circuit Judges.

PER CURIAM:*

William Arthur Knight appeals from the district court's dismissal of his *in forma pauperis* § 1983 complaint on "frivolous" grounds. He also contests various other issues stemming from the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

lower court proceedings. Having examined the arguments, we affirm the judgment of the district court.

I. BACKGROUND

Knight, a Texas state prisoner, filed this § 1983 civil rights complaint on June 3, 1991 against the State of Texas and "John Doe 1-100." Knight alleged that he was systematically denied access to federal court, that the conditions of his 1990 parole were unconstitutional, and that an arrest and subsequent prosecution for burglary were illegal. Knight sought immediate release from confinement, declaratory relief, injunctive relief, civil contempt findings, class certification, attorney's fees, costs, and ten million dollars in punitive and compensatory damages.

After the district court granted a motion for reconsideration and held a Spears hearing, the district court concluded that Knight's denial of access to the court and parole conditions allegations were frivolous. As a consequence, the court dismissed these claims with prejudice. Knight's challenge to his burglary conviction was dismissed without prejudice on the grounds that he had failed to exhaust his habeas remedies. Knight appeals from these determinations.

II. STANDARD OF REVIEW

Dismissal of an *in forma pauperis* complaint is appropriate if the district court determines that it is frivolous, i.e., that "it lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). A complaint is legally

frivolous under 28 U.S.C. § 1915(d)¹ if it is premised on an "indisputably meritless legal theory." Id. at 327. We review a district court's § 1915(d) dismissal using an abuse of discretion standard. Denton v. Hernandez, 112 S. Ct. 1728, 1734 (1992).

III. ANALYSIS AND DISCUSSION

A. Access to Federal Court

In the district court, Knight argued that he was denied access to federal court during a previous incarceration in the Texas Department of Corrections ("TDC") from 1978-1990. He claimed that throughout his incarceration, he was denied access to court because he lacked money to hire an attorney; he alleged that the staff counsel held his legal papers for eighteen months, preventing him from filing a pro se habeas corpus petition; and he contended that he was confined to administrative segregation and that his typewriter and legal notes were confiscated. He also made various allegations of retaliatory behavior by the TDC staff. Knight also alleged that he was denied access to federal court when he was arrested and sent to the Montgomery County Jail in October of 1990. He cited numerous examples of his denial of access, including contentions that no legal help was available and that inmates were not provided with sufficient supplies to draft legal materials.

At the Spears hearing, the district court ascertained that many of the complained-about actions and events occurred more than

¹ The statute provides that "[t]he court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d).

two years before the June 3, 1991 filing of Knight's complaint. Thus, the court held that these claims were barred by limitations. As to the Montgomery County Jail allegations, which were not barred by limitations, the district court found that Knight had experienced no prejudice as a result of the alleged actions and events. Thus, these non-barred claims were dismissed by the district court as frivolous.

Because there is no specified federal statute of limitations period for § 1983 lawsuits, federal courts borrow the forum state's general personal injury limitations period. See Owens v. Okure, 488 U.S. 235, 249-50 (1989); Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989). Civil rights actions brought under 42 U.S.C §§ 1981, 1983, 1985, and 1988 are deemed analogous to Texas tort actions, and therefore, the applicable limitations period is two years. See Helton v. Clements, 832 F.2d 332, 334 (5th Cir. 1987) (citing Tex. Civ. Prac. & Rem. Code § 16.003).

Although state law controls which limitations period is applicable, federal law determines when a cause of action accrues. See id. Under federal law, a cause of action accrues "the moment the plaintiff knows or has reason to know of the injury that is the basis of his complaint." Id. at 334-35. In addition, to prevail on a denial of access to the courts claim, a litigant's position must be prejudiced by the alleged violation. See Henthorn v. Swinson, 955 F.2d 351, 354 (5th Cir. 1992).

After a review of the record, we believe that the district court did not abuse its discretion in dismissing these access to

the court claims. Because of the two-year statute of limitations, all causes of action accruing before June 3, 1989 are barred. At the Spears hearing, it became clear that Knight knew of many of the injuries that served as the basis of his 1991 complaint between 1982 and 1985. In addition, although Knight contends on appeal that the district court erred in dismissing the bulk of his claims as time-barred, Knight does not allege that the incidents occurred after June 3, 1989, and he does not argue that his claims were tolled or were not otherwise time-barred.

With regard to the claims not barred by limitations, we agree that Knight has failed to show that his position was prejudiced by any of the alleged violations. For example, at the Spears hearing, Knight told the court that he had not missed any filing deadlines and that he had not lost any legal mail as a result of the alleged infractions. Indeed, we note the numerous pleadings that Knight has filed in this lawsuit alone -- many of which are quite lengthy. Simply put, we find no abuse of discretion in the district court's dismissal of Knight's access to court contentions.

B. Parole Conditions

Knight contends that he was released from the TDC sixteen days before his mandatory release date, allegedly because the TDC wanted to impose the highest level of supervision on him. Knight argued that his parole required him: 1) to pay a \$10 monthly supervision fee; 2) to report to a parole officer four times a month; 3) to work, attend school full time, or seek employment; 4) not to possess, use, or sell controlled substances; 5) not to drink

alcohol; 6) to submit to testing for alcohol use; 7) to obtain permission from his parole officer before travelling; and 8) to attend a drug program. Knight contends that these restrictions infringed on his time and restricted his ability to petition the court.

"Neither habeas nor civil rights relief can be had, however, absent the allegation by a plaintiff that he has been deprived of some right secured to him by the United States Constitution or laws." Thomas v. Torres, 717 F.2d 248, 249 (5th Cir. 1983). Therefore, if Knight has not alleged a deprivation of any such right, he has failed to state a claim for either habeas or civil rights relief. See id.

At the Spears hearing, and in his appellate brief, Knight essentially contends that the parole conditions infringed upon his time to do as he pleased. That "infringement," of course, is the nature of parole conditions, and merely taking up time is not a deprivation of a right under the Constitution or under any other law. Cf. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, 7 (1979) (noting that "the sensitive choices presented by the administrative decision to grant parole release" do not "automatically invoke due process protection"). Because Knight has failed to allege that the conditions of his parole resulted in a recognized deprivation of a right, the district court did not abuse its discretion in

dismissing this claim as frivolous and lacking an arguable basis in law.²

C. Burglary Conviction

In the district court, Knight argued that his 1993 conviction for burglary of a habitation was illegal. The district court dismissed his claims without prejudice because the court believed that "he must exhaust all available habeas remedies before making the claim the basis of a civil rights complaint." Although we agree with the ultimate result of dismissal, we disagree with the district court's reasoning for the dismissal.

In Heck v. Humphrey, 114 S. Ct. 2364, 2370 (1994), the Supreme Court adhered to its "teaching that § 1983 contains no exhaustion requirement beyond what Congress has provided." Nevertheless, the Court concluded that:

in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must provide that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

² Similarly, Knight's claim that he was denied his right to an examining trial for his burglary charge is frivolous and without merit. The right to an examining trial arises solely under Texas law, and Knight points to no federal law that guarantees an individual a right to an examining trial. See Texas v. Reimer, 678 F.2d 1232, 1233 (5th Cir. 1982). Because neither habeas nor civil rights relief can be had absent a deprivation of some federal right, Knight's examining trial claim is frivolous.

Id. at 2372 (footnote omitted). As the Court later noted:

We do not engraft an exhaustion requirement upon § 1983, but rather deny the existence of a cause of action. Even a prisoner who has fully exhausted available state remedies has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus. . . . **[A] § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated.**

Id. at 2373-74 (emphasis added).

Although the Heck Court rejected our prior approach to this area *in form*, the analysis required by Heck *in substance* "is similar in certain respects to the analysis we have long used in this circuit when a state prisoner brings a § 1983 action in federal district court." Boyd v. Biggers, 31 F.3d 279, 283 (5th Cir. 1994). As we stated in Boyd:

Under Heck, when a state prisoner brings a § 1983 action seeking damages, the trial court must first ascertain **whether a judgment in favor of the plaintiff in the § 1983 action would necessarily imply the invalidity of his conviction or sentence.** If it would, the prisoner must show that his conviction has been "reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus" in order to state a claim.

Id. at 283 (emphasis added) (citations omitted).

Knight claims that his burglary charge is false and that the trial proceedings related to the charge are illegal. A judgment for Knight would clearly imply the invalidity of his conviction and sentence. Consequently, because Knight has failed to show that his conviction has been "reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus," his § 1983 cause of

action has not accrued, and the district court's dismissal was proper.³

D. Motions in the District Court

Knight also argues that the district court erred by failing to rule on his motion for appointment of counsel, his motion for a temporary restraining order, and his motion to amend his complaint. The district court, however, implicitly denied Knight's motions by dismissing his claims. See Norman v. Apache Corp., 19 F.3d 1017, 1021 (5th Cir. 1994) ("The denial of a motion by the district court, although not formally expressed, may be implied by the entry of a final judgment or of an order inconsistent with the granting of the relief sought by the motion."). The court's denial of counsel and leave to amend, if error, were harmless because Knight's claims were substantively frivolous, counsel was desired to file a **state** habeas petition, and his burglary conviction challenge was dismissed without prejudice, such that he can amend his pleadings as he desired in his motion. Finally, the denial of an application for a temporary restraining order is not appealable. See In re Lieb, 915 F.2d 180, 183 (5th Cir. 1990).⁴

³ Even if Knight's complaint is viewed as a habeas corpus petition, the claim would still be properly dismissed for failure to exhaust.

⁴ Knight's arguments that the district court abused its discretion by limiting his more definite statement of facts to ten pages and by conducting a 15-20 minute hearing are meritless. He provides no support for the proposition that these actions constituted an abuse of discretion and he fails to identify any specific harm that resulted from these actions.

Similarly, we are unconvinced by Knight's claim that the fifty-page limitation on his appellate brief deprived him of

IV. CONCLUSION

For the foregoing reasons, the judgment of the district court is AFFIRMED.

the ability to meaningfully petition the court. Indeed, all of Knight's pleadings are quite lengthy, and his appellate brief essentially raised some type of challenge to all of the actions of the district court. Because Knight is proceeding *pro se*, we have liberally construed his allegations, see, e.g., Securities and Exch. Comm'n v. AMX, Int'l, Inc., 7 F.3d 71, 75 (5th Cir. 1993), and moreover, he has not identified any specific argument that he was prevented from raising because of the fifty-page limitation. Simply put, we have evaluated all of the actions of the district court in this case; a longer brief would not have helped.