

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20324
Summary Calendar

RICHARD T. DANIELL,

Plaintiff-Appellant,

versus

MR. COLE, Texas Department of Corrections,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-94-0071)

(December 19, 1994)

Before GOLDBERG, KING, and GARWOOD, Circuit Judges.

PER CURIAM:*

Richard T. Daniell is an inmate in the Texas Department of Criminal Justice ("TDCJ"). He challenges the dismissal of his pro se, in forma pauperis civil rights action. We VACATE and REMAND.

I

Daniell sued Officer Cole of the TDCJ under 28 U.S.C. § 1983, alleging that his First Amendment right to the free exercise of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

religion had been infringed. In his complaint Daniell alleged that he was late in responding to the call for Catholic Mass because he was standing at the rear of a dormitory when the announcement for Mass was made. When he finally reached the front of the dormitory, the other prisoners had left for Mass. He then asked Cole about attending religious services. Cole made a call to the front desk, and then informed Daniell that it was too late to go to Mass.

On appeal, Daniell alleges for the first time that all religious groups get a second call to religious services, except for Catholics. Further, he contends that he has been repeatedly prevented from attending Mass because he did not receive a second announcement of services. In his original complaint, the relief Daniell plead for was: "whatever [is] necessary to allow us to worship, even if a few minutes late."

Along with his complaint, Daniell filed a motion to proceed in forma pauperis, which the district court accepted. The district court then dismissed Daniell's suit as frivolous under 28 U.S.C. § 1915(d). In doing so, the district court stated that the "apparent TDCJ y rule or regulation regarding attending religious services which plaintiff did not timely follow is not unreasonable. The claim has no chance of ultimate success and no arguable basis in law."

II

A complaint filed in forma pauperis may be dismissed if it lacks an arguable basis in law or fact. 28 U.S.C. § 1915(d); Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). A dismissal pursuant to

§ 1915(d) is inappropriate if the plaintiff's allegations would be sufficient with additional factual development. Id. "Should it appear that insufficient factual allegations might be remedied by more specific pleading, [this court] must consider whether the district court abused its discretion by dismissing the complaint either with prejudice or without any effort to amend." Id.

Daniell's complaint alleged that his free exercise rights were infringed when Cole refused to let him attend Mass late. Although life in prison does bring a contraction of the protections afforded by the First Amendment, inmates still retain basic rights and privileges guaranteed by the Constitution. O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987). One of the rights that prisoners retain is the right to exercise their religious beliefs freely, limited only by regulations that serve a legitimate penological interest. Id. at 349.

Nevertheless, Daniell's complaint does not provide the necessary facts to state a claim against Cole. Daniell alleges that Cole denied him permission to attend Mass, after Cole conferred with another person through the telephone. On these facts alone, nothing suggests that Cole committed any wrongdoing. The most that can be said is that Cole was acting on someone else's orders, and Cole is the sole defendant named in Daniell's complaint.

Where the pleadings, viewed under the individual circumstances of the case, demonstrate that the plaintiff has pleaded his best case, there is no need to remand for further proceedings. Shultea

v. Wood, 27 F.3d 1112, 1118 (5th Cir. 1994) (quoting Jacquez v. Procunier, 801 F.2d 789, 793 (5th Cir. 1986)). There is no reason to believe that Daniell has pled his best case. The district court granted Daniell's in forma pauperis petition and dismissed his complaint as frivolous on the same day. Taking into account that Daniell is pro se, that he did not have notice that the sufficiency of his complaint was being challenged, and that he had no opportunity to amend his complaint, the district court erred in not providing Daniell with leave to amend his complaint.

For the foregoing reasons, the order dismissing the complaint is VACATED and the case is REMANDED for further proceedings consistent with this opinion.