

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20407
Conference Calendar

KIRBY GARDNER,

Plaintiff-Appellant,

versus

J. GUSTAFSON ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-93-2954

- - - - -
(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Kirby Gardner, an inmate in the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID), filed a complaint, pursuant to 42 U.S.C. § 1983, for violation of his civil rights by prison officials. The district court dismissed Gardner's action as frivolous under 28 U.S.C. § 1915(d).

An in forma pauperis (IFP) complaint may be dismissed as frivolous pursuant to § 1915(d), if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993); see Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1733, 118 L. Ed. 2d 340 (1992). This Court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S. Ct. at 1734.

Gardner asserts that his right to due process was violated by Gustafson's filing of a false charge against him, his conviction on that charge following a disciplinary hearing, and the denial of his step one grievance of that conviction. Gardner concedes that the conviction was overturned at step two of the grievance process.

That Gardner's conviction for refusing to work was reversed at step two of the grievance procedure does not, by itself, give rise to a due process violation because "[t]he constitution demands due process, not error-free decision-making." Franceski v. Plaquemines Parish School Bd., 772 F.2d 197, 200 (5th Cir. 1985) (quoting McCrae v. Hankins, 720 F.2d 863, 868 (5th Cir. 1983)). The standard for due process of prison disciplinary procedures depends on the sanctions imposed on the prisoner and the resulting consequences. A prisoner punished by solitary confinement and loss of good-time credits must receive: (1) written notice of the charges against him at least 24 hours before the hearing; (2) a written statement of the fact-finders as to the evidence relied on and the reasons for the disciplinary action taken; and (3) the opportunity to call witnesses and present documentary evidence in his defense, unless these procedures would create a security risk in the particular case. Wolff v. McDonnell, 418 U.S. 539, 563-66, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).

On appeal, Gardner does not assert that the dictates of Wolff were not followed, but suggests that this Court overrule Wolff. Unfortunately for Gardner, this Court has no power to vacate Supreme Court precedent. Furthermore, the procedures that Gardner now attacks are the same procedures that ultimately exonerated him. Gardner was given an adequate procedural remedy to challenge the false allegations made against him. The district court did not abuse its discretion in dismissing this complaint as frivolous. Gardner has not presented an issue of arguable merit on appeal and his appeal is also frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

APPEAL DISMISSED.