

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20460
Conference Calendar

MICHAEL LYNN BLUE,

Plaintiff-Appellant,

versus

J. A. COLLINS,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-0590

- - - - -
(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Texas prisoner Michael Blue appeals the dismissal of his civil rights complaint as frivolous. A reviewing court will disturb a district court's dismissal of a pauper's complaint as frivolous only on finding an abuse of discretion. A district court may dismiss such a complaint as frivolous "where it lacks an arguable basis either in law or in fact." *Denton v. Hernandez*, ___ U.S. ___, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992)(quoting *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989)).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"When state procedures provide due process and are violated by a random or unauthorized act of a state employee, even a high-ranking state employee, . . . no federal constitutional due process violation has occurred." *Holloway v. Walker*, 790 F.2d 1170, 1173 (5th Cir. 1986). Blue has not alleged a state policy that violates due process. At most, he alleges that state employees violated the policy regarding verification of signatures and fingerprints. Blue has not refuted the critical testimony in J.M. Turner's affidavit -- that TDCJ investigated the withdrawal on Blue's protest and that TDCJ reinstated the \$250 into Blue's account when Blue raised the matter in 1994. Blue received due process. Moreover, he eventually obtained satisfaction. A district judge may rely on sworn testimony by defense witnesses when considering whether a complaint is frivolous, to the extent that the plaintiff does not contest that evidence. *See Wilson v. Barrientos*, 926 F.2d 480, 483 (5th Cir. 1991); *cf. Wesson v. Oglesby*, 910 F.2d 278, 282 (5th Cir. 1990). The district judge did not abuse his discretion by dismissing Blue's complaint as frivolous.

APPEAL DISMISSED.