

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-20699

(Summary Calendar)

ISRAEL GARZA MARTINEZ,

Plaintiff-Appellant,

versus

HARRIS COUNTY JAIL, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas
(CA-H-91-1577)

November 3, 1995

Before HIGGINBOTHAM, DUHÉ, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiff Israel Martinez, an inmate of the Texas Department of Criminal Justice, Institutional Division, appeals the district court's dismissal of his *pro se* 42 U.S.C. § 1983 civil rights suit. The district court dismissed the suit as frivolous under 28 U.S.C. § 1915(d). We affirm in part, vacate in part, and remand.

I

Martinez was arrested for aggravated sexual assault and placed

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in the Harris County Jail pending trial. About a month after he was detained, Martinez was separated from the other inmates and denied telephone privileges. Martinez alleges that for the first seven days of this "solitary confinement," he was given no mattress. Martinez further alleges that for the month he was in solitary confinement, he was allowed only three showers. On the final day of his solitary confinement, Martinez alleges he suffered a nervous breakdown which caused him headaches and chest pains. Shortly thereafter, there was a pneumococcus outbreak in the Harris County Jail and Martinez received a seven-day supply of penicillin.

After Martinez's conviction, a routine physical examination revealed he had been exposed to tuberculosis, for which he received several months of treatment. Martinez alleges that the drugs made him weak and dizzy and that he made several sick-call requests which were ignored. Several months into the treatment, Martinez apparently passed out in his cell and fell to the floor. Due to the fall, Martinez suffered a laceration on the top of his head for which he received medical treatment.¹

Martinez brought this action under 42 U.S.C. § 1983, alleging that he had been denied his right to due process when he was put in solitary confinement without a hearing, that he was subjected to unconstitutional conditions during his pretrial detention, that he was given inadequate medical care (both as a pretrial detainee and as a convicted prisoner), and that overcrowding and poor

¹ Martinez alleges that as a result of his fall, he now suffers from headaches and blurred vision.

ventilation in the Harris County Jail violated the Eighth Amendment and caused him a multitude of health problems.² The district court held a *Spears*³ hearing, and subsequently dismissed Martinez's claims as frivolous under 28 U.S.C. § 1915(d). Martinez appeals, claiming it was error for the district court to dismiss his claims as frivolous. Martinez further claims that the district court erred in dismissing his claims against a state court judge on the grounds of immunity. Martinez also argues that the district court impermissibly denied him the opportunity to speak at his *Spears* hearing, and that the district court erred in denying his motion for a transcript of the *Spears* hearing to be provided at government expense.

II

We review a district court's § 1915(d) dismissal for abuse of discretion. *Denton v. Hernandez*, ___ U.S. ___, ___, 112 S. Ct. 1728, 1734, ___ L. Ed. 2d ___ (1992); *Ancar v. Sara Plasma, Inc.*, 964 F.2d 465, 468 (5th Cir. 1992). A court may dismiss an *in forma pauperis* claim under § 1915(d) "if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d). A complaint is frivolous "where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831-32, 104 L. Ed. 2d 338 (1989). "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the

² Martinez alleges that the overcrowding and poor ventilation in the jail caused him to suffer skin disorders, bowel irregularities, and eye problems.

³ *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

level of the irrational or the wholly incredible." *Denton*, ___ U.S. at ___, 112 S. Ct. at 1733. A court may not dismiss an *in forma pauperis* complaint merely because it finds the plaintiff's allegations to be unlikely, but may do so only when the alleged facts are "clearly baseless," or when the claims are "fanciful," "fantastic," or "delusional." *Id.* (citations omitted).⁴

A

Martinez argues that the district court erred in dismissing his claim that, as a pretrial detainee, he was improperly transferred to solitary confinement without notice and a hearing. The Due Process Clause of the Fourteenth Amendment prohibits "punishment" of a pretrial detainee prior to an adjudication of guilt. *Bell v. Wolfish*, 441 U.S. 520, 535-36, 99 S. Ct. 1861, 1872, 60 L. Ed. 2d 447 (1979). Therefore, we must determine whether the contested restrictions and conditions of pretrial detention amounted to punishment. *Id.* Punishment may be shown through proof of an express intent to punish. *Id.* Absent such a showing, we will uphold the challenged conditions or restrictions so long as they were reasonably related to a legitimate non-punitive governmental objective. *Id.* at 538-39; *Block v. Rutherford*, 468 U.S. 576, 584, 104 S. Ct. 3227, 3231, 82 L. Ed. 2d 438 (1984). Legitimate governmental interests, such as measures to

⁴ In reviewing a district court's frivolousness determination, we consider factors such as whether the plaintiff was proceeding *pro se*, whether the district court inappropriately resolved genuine issues of disputed fact, whether the court applied erroneous legal conclusions, whether the court has provided a statement explaining the dismissal that facilitates intelligent appellate review, and whether the court's dismissed the complaint with or without prejudice. *Denton*, ___ U.S. at ___, 112 S. Ct. at 1730.

ensure effective prison administration, "may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment." *Bell*, 441 U.S. at 540, 99 S. Ct. at 1875. If no legitimate governmental purpose for the action can be ascertained, then we may infer an intent to punish. See *Bell*, 441 U.S. at 539 ("[I]f a restriction or condition [of pretrial detention] is not reasonably related to a legitimate goal))if it is arbitrary or purposeless))a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.").

The district court dismissed Martinez's claim as frivolous on the basis that "[n]othing in the record indicates that [his] placement in restrictive custody was punitive or inconsistent with legitimate governmental objectives." Harris County transfer records indicate that "per 174 District Court" Martinez was to have "absolutely no access to phone." The restriction was to be in force "pending investigation." The record fails to reveal any reason for the telephone restriction, and does not indicate who made the order. Further, the record does not indicate that there was ever an order that Martinez be placed in solitary confinement, and prison officials gave no reason for why they chose to segregate Martinez from the rest of the prison population.⁵ The record fails

⁵ We note that part of the reason that the district court dismissed this claim as frivolous was because the court assumed that the restrictions came from a "non-defendant state court judge who is absolutely immune from liability for damages." It is true that state court judges are immune from suits for damages flowing out of their "judicial acts." *Brummett v. Camble*, 946 F.2d 1178

to establish that Martinez's segregation was motivated by a "legitimate objective."⁶ Because the reasons for Martinez's placement in more restricted custody are unclear, we cannot say conclusively that Martinez was not "punished." On this record, Martinez's allegations are not "clearly baseless," "fanciful," "fantastic," or "delusional." *Denton*, ___ U.S. at ___, 112 S. Ct. at 1733-34. Accordingly, the district court abused its discretion in dismissing Martinez's Fourteenth Amendment claim of improper confinement as frivolous under § 1915(d).

B

Martinez also argues that the district court erred in dismissing as frivolous his claim that denying him a mattress and showers violated the Fourteenth Amendment's requirements for pretrial detention. The district court held that these claims were frivolous because at least one other court had held that one shower per week is constitutionally sufficient for inmates not in the general population; *Walker v. Mintzes*, 771 F.2d 920, 928 (6th Cir.

(5th Cir. 1991), *cert. denied*, 504 U.S. 965, 112 S. Ct. 2323, 119 L. Ed. 2d 241 (1992). However, it is unclear from the record whether the orders came from a state court judge. Accordingly, it was error for the district court to rely on judicial immunity to dismiss Martinez's claim of improper pretrial detention.

⁶ The transcript of the *Spears* hearing fails to reveal why Martinez was segregated from the rest of the detainees. The government's attorney stated that "I don't have an affidavit from anyone," and then speculated that Martinez was placed in administrative segregation for his own protection. There was no sworn testimony on this point, and nothing in the record to support it. Mere speculation as to what may have been the reason for Martinez's segregation is insufficient to defeat an inference of punishment. See *Bell*, 441 U.S. at 539 n.20, 99 S. Ct. at 1874 n.20 ("[A] court must look to see if a particular restriction or condition, which may on its face appear to be punishment, is instead but an incident of a legitimate non-punitive governmental objective."); see also, *Wilson v. Barrientos*, 926 F.2d 480, 483 (5th Cir. 1991) (holding that the district court erred in dismissing claims as frivolous based on unsworn testimony or unauthenticated evidence presented in a *Spears* hearing).

1985); and because the district court felt that a single isolated incident, such as being denied a mattress, did not amount to a constitutional violation. See *George v. King*, 837 F.2d 705 (5th Cir. 1988) (holding inmate's single incident of food poisoning insufficient to support a claim for relief under § 1983). The cases cited by the district court, however, both dealt with prisoners incarcerated under a valid conviction. Martinez was a pretrial detainee, and the proper inquiry is whether or not the Harris County Jail imposed these conditions to punish Martinez. See *Bell*, 441 U.S. at 535 & n.16, 99 S. Ct. at 1872 & n.16 (explaining legal differences between prisoners and pretrial detainees). Nothing in the record, nor any testimony elicited at the *Spears* hearing, indicates why prison officials denied Martinez a mattress and showers. These deprivations could arguably constitute unconstitutional punishment of a pretrial detainee. *Bell*, 441 U.S. at 538-39, 99 S. Ct. at 1874; see also *Cupit v. Jones*, 835 F.2d 82, 85 (5th Cir. 1987) ("Furthermore, pretrial detainees are entitled to protection from adverse conditions of confinement created by prison officials for a punitive purpose or with punitive intent."); *Miller v. Carson*, 563 F.2d 741, 745-48 (5th Cir. 1977) (severe restrictions on visitation and telephone privileges of pretrial detainees violated Fourteenth Amendment). Accordingly, we hold that the district court abused its discretion in dismissing as frivolous Martinez's claims concerning these conditions of his pretrial detention.

Martinez argues that the district court erred in dismissing as frivolous his claim that he was denied adequate medical care as a pretrial detainee. "Pretrial detainees are entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate governmental objective." *Cupit*, 835 F.2d at 85. The inquiry "is whether the denial of medical care was objectively reasonable in light of the Fourteenth Amendment's guarantee of reasonable medical care and prohibition on punishment of pretrial detainees." *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1186 (5th Cir. 1990).

Martinez alleges that on the final day of his solitary confinement, he suffered a nervous breakdown and jail personnel ignored his condition. Neither the record nor the *Spears* hearing indicates whether this claim has merit.⁷ If officials knew of a serious medical condition and ignored it, either to punish Martinez or due to a "deliberate indifference" to Martinez's medical needs, it is possible that this would amount to a constitutional violation. See *Cupit*, 835 F.2d at 85-86 (holding that denial of medical treatment to pretrial detainees could violate the Due Process Clause); see also *Pedraza v. Meyer*, 919 F.2d 317, 319 (5th Cir. 1990) (vacating § 1915(d) dismissal and holding deliberate indifference to a pretrial detainee's withdrawal symptoms potentially violative of the Eighth Amendment). Where a pretrial detainee's allegations are neither contradicted by the record, nor

⁷ At the *Spears* hearing the district court mentioned this claim, but elicited no testimony on it.

"beyond credulity," a § 1915(d) dismissal is improper. *Id.* Accordingly it was abuse of discretion to dismiss this claim as frivolous under § 1915(d).⁸

III

We find the remainder of Martinez's claims wholly without merit and therefore AFFIRM the district court's § 1915(d) dismissal of those claims.⁹ We VACATE the district court's § 1915(d) dismissal of Martinez's claims concerning his treatment as a pretrial detainee, and REMAND for further proceedings.

⁸ Martinez also alleges that the district court improperly dismissed as frivolous his claim that, as a pretrial detainee, he was given inadequate medical attention during an outbreak of pneumococcus. The record indicates, however, that due to the outbreak, Martinez received a seven-day supply of penicillin. Martinez simply disagrees with this level of treatment. We hold that the district court did not abuse its discretion in dismissing this claim as frivolous. As the district court reasoned, Martinez has alleged facts that at most amount to medical negligence, and has not alleged the requisite punitive intent or deliberate indifference that would be required for Martinez to prevail on this claim. *Cupit*, 835 F.2d at 85.

⁹ Martinez also argues that the district court erred in dismissing as frivolous his claims that (1) he received inadequate medical care as a convicted prisoner, (2) that the Harris County Jail physicians had been negligent as to his particular medical needs and treatments, and (3) that many of his medical problems were caused by poor ventilation and overcrowding. These claims are wholly without merit. We also find the following claims lack merit: (1) that the district court erred in dismissing Martinez's claims against a state court judge on the grounds that he was immune from suit; (2) that the district court impermissibly denied Martinez the right to explain his allegations at the *Spears* hearing; and (3) that the district court erred in denying Martinez's motion for a transcript of the *Spears* hearing to be provided at government expense.