IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20869
Summary Calendar

Danny Leon Lucas,

Plaintiff/Appellant,

versus

J.B. Pursley, et al.,

Defendants/Appellees.

Appeal from the United States District Court
For the Southern District of Texas
(92-CV-111)

(April 24, 1995)

Before JOHNSON, DUHÉ, and BENAVIDES, Circuit Judges.[*]

JOHNSON, Circuit Judge:

A state prisoner, proceeding *in forma pauperis*, brought a section 1983[1] action against prison officials alleging that he was denied due process when he was placed in administrative segregation without appropriate procedures for what he contends were punitive reasons. The district court dismissed the action as frivolous pursuant to 28 U.S.C. § 1915(d). Finding no error, we AFFIRM.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

[1] 42 U.S.C. § 1983.

I. FACTS AND PROCEDURAL HISTORY

On April 29, 1991, Danny Leon Lucas, a Texas state prisoner, was placed in administrative segregation (solitary confinement) upon his arrival at the Walls unit, where he was being temporarily housed for a *Spears*[2] hearing in another civil rights action. He remained in administrative segregation while at the Walls unit until May 2, 1991.

According to Lucas, the prison authorities placed him in administrative segregation for punitive reasons[3] and without the proper procedures. A prison grievance form indicates, however, that Lucas was placed in administrative segregation during his transient status at the Walls Unit after a review of his disciplinary history and his adjustment records.[4]

In redress of his complaints, Lucas filed the instant civil rights suit, *in forma pauperis*, against Warden J.B. Pursley, Assistant Warden Scott and Officer R.O. Lambert. The district court conducted a *Spears* hearing to develop the factual basis of Lucas' claim. At that hearing, Lucas testified that even though he was told that he was placed in administrative segregation

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

[3] Specifically, Lucas maintains that he was placed in administrative segregation in retaliation for all of the grievances he had filed and because of the lawsuit he had already filed.

[4] Also, at the later-conducted *Spears* hearing, a warden testified that had Lucas not been in administrative segregation when he arrived, he would have been placed in transient status. This is a restrictive status that the warden characterized as a lockdown status.

because of his disciplinary and adjustment history, he guessed that it was because of his grievances and lawsuits. Unimpressed, the district court dismissed Lucas' suit with prejudice as frivolous under 28 U.S.C. § 1915(d). Lucas now appeals.

II. DISCUSSION

An *in forma pauperis* complaint may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or fact. *Denton v. Hernandez*, 504 U.S. 25, ___, 112 S.Ct. 1728, 1733 (1992); *Booker v. Koonce*, 2 F.3d 114, 116 (5th Cir. 1993); *Ancar v. Sara Plasma, Inc.*, 964 F.2d 465, 468 (5th Cir. 1992). In making these judgments, district courts are vested with broad discretion and this Court will disturb such a determination only for an abuse of that discretion. *Green v. McKaskle*, 788 F.2d 1116, 1119 (5th Cir. 1986).

A claim is factually frivolous if it describes fantastic or delusional scenarios. *Neitzke v. Williams*, 490 U.S. 319, 327-28, 109 S.Ct. 1827, 1833 (1989). Examples of a legally frivolous claims include claims against an individual who is clearly immune from suit or claims of infringement of a legal interest which clearly does not exist. *Id.*

Lucas basic theory in this case is that since he was not in administrative segregation at his permanent unit, he should not have been placed in isolation at the Walls Unit without a prior hearing. Moreover, he claims that he was placed in administrative segregation for punitive reasons in retaliation for his grievances and lawsuits. *See Gibbs v. King*, 779 F.2d

1040, 1046 (5th Cir.), *cert. denied*, 106 U.S. 1975 (1986) (prison officials may not retaliate against or harass an inmate because of the inmate's exercise of his right of access to the courts).

It is true that the use of isolation to punish a prisoner without affording due process violates the Fourteenth Amendment. *Pembroke v. Wood County, Texas*, 981 F.2d 225, 229 (5th Cir. 1993), *cert. denied*, 113 S.Ct. 2965 (1994). However, in this case, there is no evidence to show that Lucas was placed in administrative segregation to punish him for the grievances or civil rights suits he had filed. There is only Lucas' claim based on his "guess." This bald claim, without support, is not enough and was properly dismissed as frivolous. *See Whittington v. Lynaugh*, 842 F.2d 818, 819 (5th Cir.), *cert. denied*, 109 U.S. 108 (1988).

Instead of being punitive, it appears from the record that Lucas was placed in administrative segregation for a period of four days as a matter of classification. Because Lucas was a transient at the Walls Unit and because he had a history of disciplinary and adjustment problems, the prison administrators put him in administrative segregation for security reasons. We do not believe that this short period of administrative segregation, for legitimate, non-punitive reasons, occasioned any due process violation.

This is because a prisoner has no liberty interest arising under the Due Process Clause to be confined within the general

prison population as opposed to more restrictive confinement.[5] *Mitchell v. Sheriff Dept., Lubbock County*, 995 F.2d 60, 62-63 (5th Cir. 1993). "As long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight." *Montanye v. Haymes*, 427 U.S. 236, 242, 96 S.Ct. 2543, 2547 (1976). In that vein, the Supreme Court has determined that "the transfer of an inmate to less amenable and more restrictive quarters for non-punitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence." *Hewitt*, 103 S.Ct. at 864. Hence, there was no violation of the Due Process Clause here.

III. CONCLUSION

As Lucas has presented no evidence that his placement into administrative segregation was for punitive reasons and because no liberty interest created by the Due Process Clause is violated by a transfer to administrative segregation for non-punitive reasons, we find that the district court did not abuse its discretion in dismissing this suit as frivolous. Accordingly, the judgment of the district court is AFFIRMED.

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[5] Liberty interests may also arise under the laws of the state. *Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 869 (1991). However, Lucas has not argued herein that any state law or regulation affords him a liberty interest limiting the prison officials' discretion to place him in administrative segregation for non-punitive reasons. Accordingly, we do not address that issue.