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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30157

CHARLES JOSEPH, JR.,

Plaintiff-Appellant,

versus

SIDNEY BARTHELEMY, ET AL.,

Defendants-Appellees.

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CHARLES JOSEPH, JR.,

Plaintiff-Appellant,

versus

CHARLES C. FOTI, JR., ET AL.,

Defendants-Appellees.

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CHARLES JOSEPH, JR.,

Plaintiff-Appellant,

versus

CHARLES C. FOTI, JR.
and DR. RILEY,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 93-2974)

July 30, 1996

Before POLITZ, Chief Judge, JOLLY and BARKSDALE, Circuit Judges.

PER CURIAM:*

At issue is whether the district court erred by dismissing as frivolous, under 28 U.S.C. § 1915(d), this pretrial detainee action. We **AFFIRM in PART** and **VACATE and REMAND in PART**.

I.

Charles Joseph, Jr., proceeding *pro se* and *in forma pauperis*, filed three civil rights actions regarding his medical care and other conditions of confinement while incarcerated at the Orleans Parish Prison (OPP). The actions were consolidated; and after a ***Spears*** hearing, the magistrate judge determined that the claims were frivolous and recommended dismissal under § 1915(d). Joseph does not challenge either the dismissal of all defendants except the Sheriff and OPP personnel, or the dismissal of his claims regarding vermin infestation, fire hazards, or TB medication. Accordingly, these rulings are not in issue and that portion of the judgment is **AFFIRMED.**

At the hearing, the magistrate judge focused exclusively on Joseph's medical claims. But, as noted, her report and

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

recommendation recommended that all claims, including those not discussed at the hearing, be dismissed as frivolous.

Joseph filed a letter in February 1994, which the district court construed as an objection to the report. In that letter, Joseph does not mention the failure to address his other claims at the hearing, saying only:

> I Charles Joseph, Jr. #2515 adamantly disagree with the Recommendation of Civil Action numbers 93-2974, 93-3073, 93-3672 that these claims be dismissed as frivolous, and request proper proceedings to continue, also as soon as possible.

The district court overruled Joseph's objection and adopted the report.

II.

An IFP complaint may be dismissed as frivolous under § 1915(d) if it lacks an arguable basis in law or fact; we review such a dismissal for abuse of discretion. *E.g.,* ***Eason v. Thaler***, 14 F.3d 8, 9 (5th Cir. 1994). Toward that end, the court's discretion does not permit it to dismiss such a claim if, with further factual development, it could pass § 1915(d) muster. ***Id***. at 10.

This case involves a *pro se* complainant who has since been adjudicated incompetent to stand trial. On the facts in this case, Joseph was not required to ensure that the magistrate judge developed factually each of his claims at the ***Spears*** hearing. Moreover, he had no way of knowing whether the magistrate judge believed his other claims merited further factual development.

We infer from the record that the claims in issue arose while Joseph was a pretrial detainee, based on his being transferred to another facility after being adjudicated incompetent to stand trial. As hereinafter discussed, we vacate and remand for further factual development all but two of the remaining claims in issue.

A.

Joseph's assertion that officials failed to apprise the medical staff of an agreement between the City of New Orleans and the Sheriff is arguably akin to a claimed consent decree violation. Because such a violation does not in and of itself provide a valid basis for relief under § 1983, the claim was properly dismissed. *See* ***Green v. McKaskle***, 788 F.2d 1116, 1122-24 (5th Cir. 1986).

B.

Joseph complained about restrictions on telephone usage and the high prices for telephone calls and commissary items. "In evaluating the constitutionality of conditions or restrictions of pretrial detention ... the proper inquiry is whether those conditions amount to punishment of the detainee." ***Bell v. Wolfish***, 441 U.S. 520, 535 (1979). "If a ... condition is not reasonably related to a legitimate goal -- if it is arbitrary or purposeless", a court may infer that the condition amounts to punishment. ***Morrow v. Harwell***, 768 F.2d 619, 625 (5th Cir. 1985).

Obviously, on the other hand, a condition is not tantamount to punishment merely because it interferes with a detainee's desire to

live more comfortably. ***Bell***, 441 U.S. at 537. The court properly construed these allegations as merely a complaint about such interference, and thus dismissal was proper.

C.

Joseph alleged several instances of inadequate medical treatment. As a pretrial detainee, his rights regarding his basic human needs flow from Fourteenth Amendment due process. *See* ***Bell***, 441 U.S. 520. Because he complains of episodic acts or omissions of officials, rather than the general conditions, practices, rules or restrictions of pretrial confinement, he must establish that officials acted with deliberate indifference to his medical needs to establish a constitutional claim. *See generally,* ***Hare v. City of Corinth***, 74 F.3d 633 (5th Cir. 1996)(en banc).

1.

First, Joseph asserts that deputies at the OPP refused to contact the medical department after his several requests. He alleged that, on August 26, 1993, he complained for over an hour of chest pains and dizziness; that these symptoms eventually caused him to fall, injuring his back; that he remained on the floor for 45 minutes before medical help arrived; that his blood pressure was checked and found to be high; and that the medical staff failed to conduct tests to diagnose a possible heart condition. His medical records reflect, however, that this alleged omission did not prevent him from receiving the following reasonable medical care:

after his fall, the nurse monitored him for hypertension, and he was scheduled to see a doctor; the doctor examined him, and ordered medication and a special diet; and an x-ray of his back was ordered (taken that September 9) and was normal.

We are unable to discern from the record whether the medical records upon which the magistrate judge relied to determine that no factual basis existed for this claim conflicted with Joseph's ***Spears*** testimony because the magistrate judge failed to elicit from Joseph specific factual allegations regarding the claimed lack of treatment. *See* ***Varnado v. Lynaugh***, 920 F.2d 320, 321 (1991)(court may not use prison records to counter plaintiff's ***Spears*** testimony). Due to this ambiguity regarding whether Joseph sought to challenge the accuracy of the medical records, we must find that his claim did not lack an arguable basis in fact, and with further factual development might have withstood § 1915(d) scrutiny.

2.

Second, Joseph alleged that, when he informed prison officials on September 14, 1993, that he was having chest pains, heart palpitations, and dizziness, the deputy refused to call the prison hospital. He alleged further that the symptoms persisted the next day, September 15, causing another fall. At this point the medical staff was notified, and Joseph was monitored until his blood pressure decreased. His medical records indicate that he was treated on September 15, after falling in his cell; that he walked

without assistance to the clinic; that he was medicated for pain and numbness in his leg; and that he was released after 30 minutes. But, because Joseph's medical records reflect also that he did not receive treatment on September 14, when he asserts that he requested such treatment for arguably serious symptoms, his claim did not lack an arguable basis in law or fact.

3.

Third, Joseph alleged that he suffered from a back condition, which caused pain and numbness in his foot, and that, although he notified the medical staff of his pain, he waited three weeks to get a medical appointment. He alleged that, because he was not given medication for the condition, ordered at a doctor's examination on October 29, 1993, his knees gave way the next day, causing him to fall. Moreover, earlier that October, a magistrate judge had ordered that Joseph be evaluated by an orthopedist, but no such exam took place. These claims also do not lack an arguable basis in law or fact.

D.

Joseph asserted also that the OPP mail system is deficient; however, he did not claim that tampering with legal mail prejudiced his position as a litigant. *See generally,* ***Walker v. Navarro County Jail***, 4 F.3d 410, 413 (5th Cir. 1993) (holding no constitutional violation in mail process unless litigant's position prejudiced). No questions regarding the manner in which the mail

system may have so prejudiced Joseph were posed at the ***Spears*** hearing, and it is therefore possible that his insufficient factual allegations might be remedied by further development.

E.

Joseph complained that the OPP food was not "nutritionally sound". The Constitution requires no more than well-balanced meals that contain sufficient nutritional value to preserve health for pretrial detainees. ***Green v. Ferrell***, 801 F.2d 765, 770, 771 n.5 (5th Cir. 1986). Joseph was not questioned at the ***Spears*** hearing about this claim, and it possibly could have been remedied by this further factual development.

F.

Joseph asserted that the OPP guards would leave the tier for hours with the door closed, leaving inmates in danger due to armed prisoners. It is unclear from his allegations whether the complained of actions were episodic, and thus subject to the deliberate indifference standard, or the product of an established rule or procedure, requiring application of the ***Bell*** reasonable relationship standard. *See generally,* ***Hare***, 74 F.3d 633.

Even assuming that the more onerous deliberate indifference standard applied, Joseph's claim was prematurely dismissed. He was not questioned regarding this claim at the ***Spears*** hearing, but he alleged in his complaint that OPP officials were aware that some

inmates possessed weapons. It may be that, with further factual development, this claim could pass § 1915(d) muster.

III.

For the foregoing reasons, the judgment is **AFFIRMED in PART and VACATED in PART,** and this matter is remanded for further proceedings consistent with this opinion.

AFFIRMED IN PART AND VACATED AND REMANDED IN PART