IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-30514
(Summary Calendar)

SIDNEY MARTS,

Plaintiff-Appellant,

versus

DEPUTY RANDOLF, Deputy Sheriff
on tier C-1, Orleans Parish Prison Defendant-Appellee.

Appeal from United States District Court
for the Eastern District of Louisiana
(94-CV-1811-B)

(January 3, 1995)

BEFORE DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:[*]

Sidney Marts appeals the district court's dismissal of his 42 U.S.C. § 1983 action against a Louisiana prison guard. For the following reasons, the judgment of the district court is reversed and the case is remanded.

BACKGROUND

Sidney Marts, who is incarcerated in the Orleans Parish Prison (OPP) system, filed a pro se 42 U.S.C. § 1983 action against Deputy

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Randolf, a guard at OPP. Marts alleged that he is a pretrial detainee housed in a managerial control unit where inmates are segregated from one another and kept locked down twenty-three hours a day. Marts alleged that Randolf uses inmates as guards and that these inmates violently beat and chastise the other inmates for minor infractions. Marts also contended that the inmate guards committed a number of prohibited acts that included being out of their cells all day, smoking while other inmates are prohibited from smoking, stealing food during mealtimes, and selling cigarettes to inmates. Additionally, Marts complained that Randolf removes the mattresses from the cell of every inmate who is not a guard. Marts contended that the confiscated mattresses are placed on wet floors. Marts also contended that Randolf's actions place Marts in an unsecured environment.

Without conducting a Spears[1] hearing or affording Marts any other opportunity to amend his complaint, the magistrate judge reported that Marts had failed to allege a factual or a legal basis for his § 1983 action and recommended that the action be dismissed without prejudice as frivolous. Over Marts' objections, the district court adopted the magistrate judge's report and dismissed the complaint without prejudice as frivolous. Marts appeals the dismissal of his complaint.

DISCUSSION

Marts couches his appeal in terms of a constitutional violation of denial of meaningful access to the courts. We,

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

however, view these arguments as a challenge of the district court's dismissal, as frivolous, of his 42 U.S.C. § 1983 action. A complaint filed in forma pauperis (IFP) can be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint is "`frivolous where it lacks an arguable basis either in law or in fact.'" Denton v. Hernandez, ___U.S.___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992) (citing Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 1831, 104 L.Ed.2d 338 (1989)). A handwritten pro se complaint is to be liberally construed without regard to how inartfully the claim has been pled. Id. This Court reviews a § 1915(d) dismissal for abuse of discretion. Denton, 112 S.Ct. at 1734.

In essence, Marts' complaint challenges the condition of his imprisonment. Pre-trial detainees are protected by the Fourteenth Amendment's Due Process Clause. Cupit v. Jones, 835 F.2d 82, 84 (5th Cir. 1987). The proper inquiry under the Due Process Clause is whether conditions accompanying pretrial detention amount to punishment of the detainee, because the Due Process Clause does not permit punishment prior to an adjudication of guilt. Bell v. Wolfish, 441 U.S. 520, 535, 99 S.Ct. 1861, 1872, 60 L.Ed.2d 4447 (1979). The fact that "detention interferes with the [pre-trial] detainee's understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into 'punishment.'" Id. at 537. "[I]f a particular condition or restriction of pretrial detention is reasonably related to a

legitimate governmental objective, it does not, without more, amount to 'punishment.'" Id. at 539. Alternatively, an arbitrary or purposeless restriction on a pre-trial detainee leads to the inference that the restriction is punitive. See Olgin v. Darnell, 664 F.2d 107, 109 (5th Cir. 1981). If there is no proof of intent to punish, the Court should consider whether the restriction is rationally related to a non-punitive purpose and whether the restriction appears excessive in relation to that purpose. Block v. Rutherford, 468 U.S. 576, 584, 104 S.Ct. 3227, 3231, 82 L.Ed.2d 438 (1984).

"Prison administrators [are to be] accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell, 441 U.S. at 547; 99 S.Ct. 1878. The Court should not substitute its judgment on matters of institutional administration and security for that of the persons trained and charged with running the prison. Id. at 548; 99 S.Ct. at 1879.

In his complaint, Marts alleges that he fears for his life because other inmates, who are used as guards, are abusing their authority. He alleges that the inmate trustees are allowed to beat up prisoners with impunity and at the behest of prison guards. He also alleges that his mattress is confiscated during the day and that he is forced to lie on bare steel during the day while he is locked down. He also alleges that when the mattresses are returned to him, they are wet. The complaint was never served upon the

prison guard so there is no evidence in the record contesting Marts' allegations or providing a legitimate rationale behind the inmate guards' actions. It is at least arguable that the virtual constant confinement without a mattress could amount to punishment. The district court's failure to address this claim constituted an abuse of discretion.

In Jones v. Diamond, 636 F.2d 1364 (5th Cir.), cert. granted sub nom, Ledbetter v. Jones, 452 U.S. 959, 101 S.Ct. 3106, 69 L.Ed.2d 970, cert dismissed, 453 U.S. 950, 012 S.Ct. 27 , 69 L.Ed. 1033 (1981), over-ruled other grounds, International Woodworkers of America v. Champion, 790 F.2d 1174 (1986), prisoners had been placed in charge of prisoners from sixteen to twenty hours per day. These trustees would subject the prisoners to sexual and physical assaults during mock trials. In addition to this violent atmosphere, the prison was overcrowded and was kept in filthy, unhygienic conditions. The court in holding these combined conditions amounted to cruel and unusual punishment stated that "confinement in a prison where terror reigns is cruel and unusual punishment." Id. at 1373.

Similarly in this case, where Marts has alleged that inmate guards are beating inmates, he has stated a facially non-frivolous claim for a violation of the Due Process Clause by being confined to an environment of terror that amounts to cruel and unusual punishment. In the absence of any evidence in the record disputing Marts' allegations or providing a rational explanation for the actions of the inmate guards, we cannot say that Marts' complaint

has no arguable basis either in law or in fact. Pretrial detainees have a right to be protected from the constant threat of violence at the hands of other prisoners. Alberti v. Klevenhagen, 790 F.2d 1220 (5th Cir. 1986). The district court's failure to address this claim constituted an abuse of discretion.

Marts' allegations that he was physically assaulted by one of the inmate guards and that he was sentenced to the managerial control unit without an adequate hearing are raised for the first time on appeal. We need not address these contentions on appeal. Varando v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

CONCLUSION

Because Marts' complaint contains allegations having an arguable basis in law, we REVERSE the district court judgment dismissing his complaint and REMAND this case for further proceedings.