

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40036  
Conference Calendar

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GLENN STEWART STITT,

Plaintiff-Appellant,

versus

J. COCKRELL, Warden, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:93-CV-390  
- - - - -  
(July 21, 1994)

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

PER CURIAM:\*

Stitt filed a pro se, in forma pauperis (IFP) complaint alleging Eighth Amendment and due process violations. The district court dismissed the complaint with prejudice.

A complaint filed IFP can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id.

Stitt argues that prison officials failed to give him adequate protection after his cellmate threatened to slit his throat. To establish a failure-to-protect claim Stitt must show that prison officials were deliberately indifferent to his need for protection. Wilson v. Seiter, 501 F.2d 294, \_\_\_, 111 S. Ct. 2321, 2326-27, 115 L. Ed. 2d 271 (1991). A prison official acts with deliberate indifference under the Eighth Amendment "only if he knows that inmates face a substantial risk of serious harm and [he] disregards that risk by failing to take reasonable measures to abate it." Farmer v. Brennan, \_\_\_ U.S. \_\_\_, 114 S. Ct. 1970, 1984, \_\_\_ L. Ed. 2d \_\_\_ (1994). By Stitt's own admission prison officials offered to move Stitt to a different cell block as a result of the threat, but Stitt refused. Stitt's dissatisfaction with the proposed solution does not establish that prison officials were deliberately indifferent to his safety needs.

Stitt also appears to argue that his Eighth Amendment rights were violated when a prison guard "paraded" two other inmates in front of his cell after allegedly beating these prisoners. Stitt argues that seeing the two other prisoners put him in fear that he would be beaten next. He has not alleged, however, that the prison guard threatened him directly. Although Stitt may have been alarmed by the sight of these prisoners, he has not alleged an Eighth Amendment claim. See Bender v. Brumley, 1 F.3d 271, 274 n.4 (5th Cir. 1993) (mere threatening language and gestures do not amount to a constitutional violation).

Stitt also argues that he was denied due process because he was punished by 15-days of solitary confinement because he refused to obey the prison guards order to "rack up" with the cellmate that threatened to slash his throat. Punishment cannot be imposed on a prisoner without due process. See Cooper v. Sheriff, Lubbock County, Tex., 929 F.2d 1078, 1084 (5th Cir. 1991). However, the federal courts have a narrow role in the review of prison proceedings. Stewart v. Thigpen, 730 F.2d 1002, 1005 (5th Cir. 1984). If a prisoner is provided with a procedurally adequate hearing prior to the imposition of disciplinary sanctions, there is no constitutional violation. Id. at 1005-06. Federal review of the sufficiency of the evidence of prison disciplinary findings is limited to determining whether the finding is supported by any evidence at all. Id. Stitt admits that he refused to "rack up" because he feared that his cellmate would hurt him and that he was given an opportunity to change cells but refused. Therefore, there is some evidence to support the finding of guilt, and Stitt was not punished without due process.

Stitt also argues that he was denied due process because he was temporarily placed in administrative segregation without a due process hearing. Stitt raised this issue for the first time in his objections to the magistrate judge's report and recommendation, and therefore it is not properly before this Court. See United States v. Armstrong, 951 F.2d 626, 630 (5th Cir. 1992) (issues raised for the first time in objections to the

magistrate judge's report were not properly before the district court and therefore will not be addressed on appeal).

AFFIRMED.