IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-40188

THOMAS E. JONES,
a/k/a Adisa RAM Al-Qaid,

Plaintiff-Appellant,

VERSUS

JANIE COCKRELL,
Warden, Beto Unit, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(6:92-CV-350)

(February 6, 1995)

Before HIGGINBOTHAM, SMITH, and BARKSDALE, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

Thomas Jones, an inmate confined in the Texas Department of Criminal Justice-Institutional Division ("TDCJ-ID"), sued pro se and in forma pauperis ("IFP") several state prison officials under 42 U.S.C. § 1983, alleging numerous constitutional violations. The

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* 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 Pursuant to that rule, the court has determined that this opinion should not be published.

magistrate judge dismissed as frivolous all but two issues[1] pursuant to 28 U.S.C. § 1915(d). Jones appeals the dismissal of two claims, arguing that those claims had a sufficient basis in law and fact such that the dismissal was unwarranted. Because one of the two claims is colorable, we affirm in part and vacate and remand for further proceedings in part.

I.

In June 1992, the wing on which Jones was imprisoned was locked down because of the unruly and disruptive actions of several other inmates. According to Jones, during this lockdown, the inmates were not released from their cells for hot meals or other reasons until the third or fourth week. Although the amount of time the wing was locked down is uncertain, the magistrate judge, after an evidentiary hearing, concluded that the lockdown had lasted for approximately six weeks.

In addition, Jones, a practicing Muslim, petitioned the warden for permission to wear facial hair, something that he claims is required by the Muslim faith. The warden denied the request for "security reasons." After conducting a hearing pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985), the magistrate judge concluded that these claims, as well as others presented by Jones, were frivolous and dismissed them pursuant to § 1915(d).

[1] The two non-frivolous issues were ultimately tried to the bench in January 1994. The magistrate judge found in favor of the defendant, and judgment was entered accordingly. Jones does not present any arguments concerning that judgment.

II.

An IFP proceeding may be dismissed under § 1915(d) if it lacks an arguable basis in law or fact. Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). Section 1915(d) "accords judges not only the authority to dismiss a claim based upon an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Macias v. Raul A. (Unknown), Badge No. 153, 23 F.3d 94, 97 (5th Cir.), cert. denied, 115 S. Ct. 220 (1994) (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)). When determining whether the complaint is frivolous, the district court is given broad discretion. Thompson v. Patteson, 985 F.2d 202, 205 (5th Cir. 1993). Consequently, we review such dismissals only for abuse of discretion. Smith v. Aldingers, 999 F.2d 109, 110 (5th Cir. 1993).

A.

First, Jones contends that his due process claim concerning the extended lockdown is grounded in law and fact, and, as such, is non-frivolous. As the magistrate judge held in his memorandum opinion, prison inmates have a claim under § 1983 for placement in segregation only if they have a liberty interest in remaining in the general prison population. Dzana v. Foti, 829 F.2d 558, 560 (5th Cir. 1987). The due process clause, by itself, does not grant a prisoner the right to be free from segregation, although local statutes and regulations, if they significantly limit prison

authorities' discretion and carry mandatory force, can create a liberty interest. Id.

In the light of these principles, the magistrate judge, after conducting a Spears hearing, concluded that Jones had not demonstrated that his due process rights had been violated. First, Jones concedes that other inmates on the wing were engaging in disruptive behavior. Under TDCJ-ID regulations, lockdowns are appropriate where necessary to suppress a major threat to the institution's safety or security. See Texas Department of Criminal Justice, Institutional Division Administrative Directive 3.31 (March 7, 1991). Noting that internal security of a prison is a matter normally left to the discretion of prison administrators, and a reviewing court accords such discretion special weight when the potential for conflict ripens into actual violence, see Buchanan v. United States, 915 F.2d 969, 971 (5th Cir. 1990), the magistrate judge concluded that the prison officials acted within their sphere of discretion. Accordingly, the magistrate judge dismissed Jones's claim as frivolous.

Under the precedents of this circuit, a prisoner is entitled to some minimal form of process when he is segregated from the general prison population as a punitive measure.[2] These precedents

[2] See, e.g., Hewitt v. Helms, 459 U.S. 460 (1983) (State rules created a protected liberty interest in remaining in the general prison population, but process due prisoner punitively administratively segregated was satisfied by informal, nonadversary review.); Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994) ("Even though a lockdown rarely will require more than informal review, some process arguably was due Eason . . . ."); Mitchell v. Sheriff Dep't, Lubbock County, Tex., 995 F.2d 60 (5th Cir. 1993) ("[I]f Mitchell was placed or maintained in isolation for punitive reasons, then the prison officials may well have violated his right to due process by failing to give an appropriate notice and hearing."); Pembroke v. Wood County, Tex., 981

(continued...)

are not implicated in the case at bar, however, as Jones has not asserted that the Warden's lockdown was undertaken with a punitive purpose. In fact, Jones concedes that other inmates on the wing were behaving disruptively before the lockdown, a fact lending support to the conclusion that the purpose of the lockdown was protective rather than punitive. As there was no showing of punitive purpose, and as a Spears hearing was conducted, we find no abuse of discretion in the magistrate judge's dismissal of Jones's lockdown claim.

B.

Next, Jones argues that the warden's refusal to allow him to wear facial hair interferes with his practice of the Muslim religion. Although a panel of this court has previously resolved this issue against Jones's position, see Powell v. Estelle, 959 F.2d 22, 25-26 (5th Cir.), cert. denied, 113 S. Ct. 668 (1992), a recent statutory enactment may supplant this decision. See Religious Freedom Restoration Act of 1993, ("RFRA"), P.L. 103-141, 107 Stat. 1488, 42 U.S.C. §§ 2000bb-2000bb-4 (Nov. 16, 1993). RFRA prohibits the government from placing a substantial burden on the exercise of religion except when it is done "in the least restrictive means" that is "in furtherance of a compelling governmental interest." 42 U.S.C. § 2000bb-1. In the only Fifth Circuit case

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[2](...continued)
F.2d 225, 229 (5th Cir.), cert. denied, 113 S. Ct. 2965 (1993) ("The use of punitive isolation without affording due process is unacceptable and violates the 14th Amendment."); McCrae v. Hankins, 720 F.2d 863 (5th Cir. 1983) (State regulations created liberty interest in being free from extended lockdown for punitive purposes.).

to consider this enactment, we remanded with instructions to reconsider the claim in light of the new statute. Alabama & Coushatta Tribes v. Trustees of Big Sandy Indep. Sch. Dist., No. 93-4365, slip op. at 1-4 (5th Cir. Mar. 31, 1994) (unpublished). Because RFRA may affect any decision on this issue, and because the parties have not briefed the affect of RFRA, we remand for further consideration.

III.

For the foregoing reasons, we AFFIRM the magistrate judge's judgment dismissing as frivolous Jones's due process claim. We VACATE the dismissal of Jones's facial hair claim and REMAND for further consideration consistent with this opinion.