IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40524
(Summary Calendar)

JOHN J. DAYSE,

Plaintiff-Appellant,

versus

JIMMY ALFORD, Sr. Warden,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(6:93-CV-749)

(December 23, 1994)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

In this prisoner civil rights appeal, Plaintiff-Appellant John J. Dayse, a prisoner of the State of Texas, contests dismissal of his 42 U.S.C. § 1983 case as frivolous pursuant to 28 U.S.C.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

§ 1915(d). Concluding that Dayse has failed to show that the prisoner disciplinary procedure is unconstitutionally inadequate, we affirm.

I

FACTS AND PROCEEDINGS

Dayse was found guilty of intentionally damaging his cell door.[1] After unsuccessfully seeking administrative relief, he filed an in forma pauperis (IFP) civil rights complaint alleging due process violations grounded in claims of inadequate disciplinary procedures. Essentially he argued that the disciplinary proceedings are unconstitutional because a prisoner is never considered credible and prison officials denied his request for a polygraph test to bolster his credibility. The district court dismissed the complaint with prejudice as frivolous.[2]

II

ANALYSIS

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,

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

[2]The magistrate judge recommended dismissing the complaint with prejudice for purposes of proceeding IFP. In the judgment dismissing the complaint, however, the district court dismissed the complaint with prejudice. Section 1915(d) dismissals are generally without prejudice. See Graves v. Hampton, 1 F.3d 315, 318-19 (5th Cir. 1993). If, however, the allegations in the complaint are legally insufficient and cannot be cured by an amendment, a § 1915(d) may be dismissed with prejudice. Id. at 319.

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

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 a procedurally adequate hearing prior to the imposition of disciplinary sanctions, there is no constitutional violation. Id. at 1005-06. When a prisoner is subject to major disciplinary sanctions, such as the loss of good-time credit, procedural due process requires that the prisoner receive written notice of the charges at least 24 hours before the hearing; that he receive a written statement of the decision and evidence relied on by the disciplinary board; and that he be permitted to call witnesses and present documentary evidence if doing so would not present a hazard to institutional safety or correctional goals.[3] Wolff v. McDonnel, 418 U.S. 539, 564-65, 94 S. Ct. 2963, 41 L.Ed.2d 935 (1974).

Dayse argues that he was denied due process because he was found guilty of committing cell damage despite the fact that no one saw him do so. He contends that the evidentiary rule that creates a presumption that he committed the damage because he was the only inmate in the cell is unconstitutional because the presumption is

[3]The record is unclear whether Dayse was subject to major disciplinary sanctions entitling him to the Wolff protections, or was subject to minor disciplinary sanctions, requiring only notice of the charges, an opportunity to respond, and an informal, nonadversary evidentiary review. See Hewitt v. Helms, 459 U.S. 460, 476, 103 S. Ct. 864, 74 L.Ed.2d 675 (1983). We need not resolve this issue, however, because Dayse received the Wolff protections.

not included in the written rules. Although due process requires that an inmate receive notice that conduct is proscribed before he may be punished for that conduct, see Gibbs v. King, 779 F.2d 1040, 1044 (5th Cir.), cert. denied, 476 U.S. 1117 (1986), there is no legal authority for the proposition that an inmate must receive notice of all evidentiary burdens to be applied. Dayse does not argue that he did not have notice of the charged offense or that the charged conduct was proscribed; therefore he has failed to allege a cognizable due process violation.

Dayse also contends that the system is unfair because an inmate is rarely believed and prison officials will not administer a polygraph test to an inmate to permit him to bolster his credibility. He contends that, as inmates lack credibility, they are unable effectively to corroborate their version of the events. Dayse concedes, however, that inmates are believed at least some of the time.

His argument does not rise to the level of a constitutional violation. Even though the constitution mandates due process, it does not guarantee perfect, error-free decision-making. See McCrae v. Hankins, 720 F.2d 863, 868 (5th Cir. 1983). Dayse was permitted to present a defense; however, the disciplinary officer believed and accepted the prison official's version of the facts. The district court did not abuse its discretion by dismissing the complaint.

AFFIRMED.