UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-40932
Summary Calendar

DANNY RAY CLINE,

Plaintiff-Appellant,

versus

WAYNE SCOTT, Director, Texas Department of Criminal Justice, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Texas
(93-CV-582)

(January 26, 1995)

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

PER CURIAM:[*]

Danny Ray Cline, an inmate in the Texas Department of Criminal Justice, appeals the district court's 28 U.S.C. § 1915(d) dismissal of his *pro se, in forma pauperis* 42 U.S.C. § 1983 suit. Cline also has filed with this court a motion to vacate the report of the

---

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

magistrate judge and the judgment of the district court under Fed.R.Civ.P. 59(e) and 60(b). We find no error and affirm the judgment of the district court and dismiss the motion to vacate.

Background

Cline, an avowed white supremacist who claims that black people are evil, alleges that he was placed in "isolation confinement"[1] and subjected to disciplinary proceedings on three occasions after refusing cell transfers which would have placed him with a black inmate. He further alleges that he received no notice of any rule infraction prior to the isolation and disciplinary proceedings. According to Cline, during periods of isolation he was released only to shower and for family visitation, and he was placed in handcuffs whenever taken from his cell.[2]

Cline's complaint, brought against various prison officials, alleges violation of his equal protection and due process rights. In a supplemental complaint, Cline sought monetary damages and injunctive relief to restrain defendants from coercion "by use or threat of physical restraint" or through the legal process to compel Cline to live with black inmates. He then filed a motion to

[1]"Isolation confinement" is a term coined by Cline to describe mental sufferings from being placed in a single cell away from the general prison population.

[2]Cline additionally urges facts in the instant appeal not raised in the original, amended, or supplemental complaints, pertaining to isolation confinement in the Mark Stile Unit. Generally, we do not review issues raised for the first time on appeal. **United States v. Garcia-Pillado**, 898 F.2d 36 (5th Cir. 1990), overruled in part by **United States v. Calverley**, 37 F.3d 160 (5th Cir. 1994) (*en banc*) (holding that legal errors raised for the first time on appeal are reviewed only under the plain error standard).

enforce the judgment in **Lamar v. Coffield**,[3] a consent decree in a class action lawsuit regarding race-based prison housing assignments.

The district court adopted the legal and factual findings of the magistrate judge, dismissing under 28 U.S.C. § 1915(d) that portion of Cline's claim that arose at the Michael Unit as repetitious of claims alleged in a previous civil rights case filed by Cline. Finding that Cline's claim for injunctive relief could be pursued under the ongoing **Lamar** litigation, those claims were dismissed without prejudice. The monetary claims were dismissed with prejudice as frivolous under section 1915(d). Finally, the district court warned Cline that because this was a repetitive frivolous action, sanctions could be imposed if further frivolous lawsuits were filed.

Analysis

Cline's chief claims on appeal are that the district court improperly dismissed his complaint and that he was deprived of procedural due process because of the magistrate judge's bias and the failure to serve the defendants with a copy of the complaint and summons.

We find no error. The district court properly dismissed Cline's complaint under section 1915(d) as it lacked an arguable basis in law.[4] As the district court found, Cline did not demonstrate a violation of equal protection, identifying no

[3]No. 72-H-1393 (S.D.Tex.).

[4]**Denton v. Hernandez**, 112 S.Ct. 1728 (1992).

constitutional right to confinement in a cell with an inmate possessing his skin color; nor did he allege a legal basis for the claimed denial of due process.[5]

Nor do we find that Cline has demonstrated that the magistrate judge exhibited bias or that the dismissal prior to service of the defendants violated procedural due process. A court may dismiss an *in forma pauperis* suit prior to service of process where satisfied that the action is frivolous.[6]

Finally, Cline may not invoke Rules 59 and 60 of the Federal Rules of Civil Procedure in this court. Assuming his assertions had merit, which they do not, his motion to vacate the actions of the magistrate judge and district court under those rules must first be presented to the district court.

Cline is cautioned that if he persists in filing frivolous actions in the district court and frivolous appeals in this court, the full panoply of sanctions will be brought to bear, including the imposing on future filings the requirement that he secure prior court approval for the filing. Frivolous filings interfere with the court's timely disposition of litigation which has merit; such frivolous filings, therefore, cannot be tolerated.

Judgment AFFIRMED; motion to vacate DISMISSED.

---

[5]See **Meachum v. Fano**, 427 U.S. 215 (1976).

[6]**Rourke v. Thompson**, 11 F.3d 47 (5th Cir. 1993).