UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-41146
Summary Calendar

RICHARD BRENTON TOBIAS,

Plaintiff-Appellant,

versus

JAMES COLLINS, Director,
TDCJ-Institutional Division, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Texas
(9:94-CV-9)

(May 19, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.[*]

GARWOOD, Circuit Judge:

Proceeding *pro se* and *in forma pauperis*, plaintiff-appellant Richard Brenton Tobias (Tobias), a prisoner in the custody of the Texas Department of Criminal Justice (TDCJ), Terrell Unit, brought

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

this civil rights suit under 42 U.S.C. § 1983 against nineteen named TDCJ employees (Defendants). The district court dismissed the action, and we affirm.

Proceedings Below

Tobias filed this section 1983 suit on January 24, 1994. In his original complaint, Tobias cataloged a number of claims without any factual support or explanation as to how they related to him. The district court referred the action to a magistrate judge, who ordered Tobias to file an amended pleading specifying his constitutional injuries and those persons responsible for them. Tobias complied and submitted a prolix, but nonetheless vague, amended complaint. The magistrate judge, after reviewing the original and amended complaints in detail, recommended dismissing with prejudice as frivolous all Tobias's claims relating to conduct in TDCJ's Terrell Unit. 28 U.S.C. § 1915(d). The magistrate judge further recommended dismissing for improper venue those claims relating to conduct at the Pack I Unit. 28 U.S.C. § 1406. Overruling Tobias's objections, the district court adopted the report and recommendation of the magistrate judge and dismissed the suit accordingly. Tobias filed a timely notice of appeal.

Discussion

Those of Tobias's claims not raised below, as well as those not briefed here, will not be considered on appeal. *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991); *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993) (holding that a litigant, even a *pro se* litigant, may not adopt previously filed legal and factual arguments as a substitute for briefing on appeal); *L & A*

Contracting v. Southern Concrete Services, 17 F.3d 106, 113 (5th Cir. 1994) (issues not briefed deemed abandoned on appeal). Likewise we will not discuss Tobias's claimed violations of the remedial measures contained in *Ruiz v. Estelle*, 503 F.Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115, *amended in part and vacated in part*, 688 F.2d 266 (5th Cir. 1982), *and cert. denied*, 460 U.S. 1042 (1983), because those measures, not being themselves constitutional or statutory rights, cannot serve as a basis for suit under section 1983. *Green v. McKaskle*, 788 F.2d 1116, 1122-23 (5th Cir. 1986). With regard to the remaining claims, we begin with those dismissed under section 1915(d). Section 1915(d) provides for the dismissal of claims brought by a litigant proceeding *in forma pauperis* that lack an arguable basis in law or fact. *Eason v. Thaler*, 14 F.3d 8, 9 (5th Cir. 1994). We review the district court's decision to dismiss for abuse of discretion. *Id.*

Initially, Tobias complains that the district court abused its discretion in dismissing his suit under section 1915(d) because, had the defendants been served, they would have been compelled to produce documents that support his allegations. He further contends that the magistrate judge failed to develop the factual basis of his complaint by questionnaire and that the court's order for additional pleading was inadequate. The crux of Tobias's complaint is that his suit was dismissed before he had the opportunity or ability to produce copies of internal grievances to support his allegations. Despite ample opportunity, however, Tobias has never stated any particulars concerning the contents of

these grievances or explained what information they contain that is not already in the amended complaint; nor is there any indication that he sought to amend his complaint a second time to provide such information. Tobias has therefore failed to support his allegation that the district court abused its discretion in dismissing his claim without first considering these grievances.

Second, Tobias contends that the district court abused its discretion in dismissing as frivolous his claim of improper reclassification at the Terrell Unit. After being transferred from Pack I to the Terrell Unit, Tobias, who allegedly has a minimum-custody status, was assigned a maintenance job in a minimum-custody building. He claims that he was then transferred, because of his asthma, from his maintenance job to a hoe squad in another building, which housed both minimum- and medium-security inmates. After this transfer, Tobias claims, he was effectively treated as a medium-security inmate and thus suffered a change in custody in violation of TDCJ rules and, thereby, of due process.

We reject this contention because Tobias has not alleged a violation of his constitutional rights, a prerequisite to suit under section 1983. Even if Defendants violated TDCJ policy, a violation of prison regulations, without more, does not give rise to a federal constitutional violation. *Hernandez v. Estelle*, 788 F.2d 1154, 1158 (5th Cir. 1986). There is no allegation indicating that any regulation created a liberty interest in any particular custodial classification, and we are aware of none. *See Moody v. Baker*, 857 F.2d 256, 257-8 (5th Cir.), *cert. denied*, 109 S.Ct. 340 (1988). To the extent Tobias argues that the reclassification

affected his parole, furlough, or SAT status, his claim must likewise fail because, under Texas law, prisoners have no protected liberty interest in such matters. *Hagins v. Keese*, No. 94-10105, Op. at 3-4 (5th Cir. Aug. 29, 1994) (unpublished); *see also Gilbertson v. Texas Bd. of Pardons & Paroles*, 993 F.2d 74, 75 (5th Cir. 1993); *Morris v. McCotter*, 773 F.Supp. 969, 971-72 (E.D. Tex. 1991).

Tobias also argues that he was disciplined in violation of due process. Although Tobias asserted below that he was not guilty of the disciplinary charges filed against him, in his complaint he conceded that he had committed the charged acts by attempting to go to the mail room even though he had been denied a pass and by refusing to return to his cell after a pod boss ordered him to. The hearing officer therefore had "some evidence" upon which to base Tobias's conviction on these charges. *Gibbs v. King*, 779 F.2d 1040, 1044 (5th Cir.), *cert. denied*, 106 S.Ct. 1975 (1986). Tobias further contends that the procedures provided at the disciplinary hearing were constitutionally inadequate because the hearing officer allegedly does not allow inmates to "directly question bosses" or otherwise to effectively confront the evidence against them. Tobias, however, is not due such process even at a major disciplinary hearing, which he alleges this was. *See Wolff v. McDonnell*, 94 S.Ct. 2963, 2980 (1974). The failure to provide more than due process requires cannot amount to the deprivation of a constitutional right under section 1983.

Finally, Tobias argues that the district court erred in dismissing for improper venue, under 28 U.S.C. § 1406(a), his claim

that he was transferred from the Pack I Unit to the Terrell Unit in retaliation for grievances he filed while at Pack I. Tobias does not dispute that the alleged retaliation occurred in the Southern District, where Pack I is located, rather than in the Eastern District, where this suit was filed. Instead, he argues vaguely that he has a constitutional right to file grievances. Regardless of his right to file grievances, *Gartrell v. Gaylor*, 981 F.2d 254, 259 (5th Cir. 1993), however, Tobias has failed to allege even the thinnest factual support or basis for this conclusory claim; the claim is thus frivolous. *Whittington v. Lynaugh*, 842 F.2d 818, 819 (5th Cir.), *cert. denied*, 109 S.Ct. 108 (1988). The district court was well within its discretion to conclude that it was not in the interests of justice to transfer, rather than dismiss, this portion of the case. We find no abuse of discretion.

Conclusion

For the foregoing reasons, the judgment of the district court is

AFFIRMED.