

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50257
Conference Calendar

KEVIN DEWAYNE GRANT,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director of
TDCJ, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-93-CV-291
- - - - -
(July 20, 1994)

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

PER CURIAM:*

IT IS ORDERED that Kevin Dewayne Grant's motion for leave to appeal in forma pauperis (IFP) is DENIED. The appeal lacks arguable merit and is, therefore, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

An IFP complaint may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993); see

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). This court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S.Ct. at 1734.

"The Eighth Amendment affords prisoners protection against injury at the hands of other inmates." Johnston v. Lucas, 786 F.2d 1254, 1259 (5th Cir. 1986) (citation omitted). To make such a claim, Grant must demonstrate "a conscious or callous indifference" to his rights on the part of prison officials. Id. Allegations amounting to mere negligence do not rise to the level of a constitutional violation. Id. at 1259-60.

The magistrate judge concluded that Grant had failed to articulate facts stating a non-frivolous claim against the defendant supervisory personnel for failure to protect. We agree. At the Spears hearing, see Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985), Grant alleged that the environment in administrative segregation was unsafe and testified concerning two attacks against him by other inmates. The first incident occurred when an inmate named "Garcia" threw raw sewage on Grant. After the assault, Grant was allowed to take a shower and his cell was cleaned up. Grant did not allege that he suffered any harm from this incident. The second incident occurred when another inmate threw a "scalding hot liquid" from his cell in Grant's face. Neither prison officials nor Grant received advanced warning that the inmate was going to throw the liquid. Grant stated that, as a result of the scalding, he "received a couple of blisters on [his] face." Grant also stated that he

later fought with the inmate who had scalded him but received no physical injury. These allegations do not show that the defendant supervisory personnel were consciously or callously indifferent to Grant's rights. Thus, the district court did not abuse its discretion in dismissing this claim.

Grant also argues, for the first time on appeal, that the magistrate judge was biased against him. This Court will not address this issue. United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990) (issues raised for the first time on appeal are reviewable only if they involve purely legal questions and failure to address them would result in manifest injustice).

As to any remaining issues alleged in his complaint and at the Spears hearing, Grant addresses neither the merits of the district court's judgment nor any errors in the legal analysis. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). This Court "will not raise and discuss legal issues that [Grant] has failed to assert." Id.

IT IS FURTHER ORDERED that Grant's "motion for relief" is DENIED.

APPEAL DISMISSED.