

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50451
Conference Calendar

VENICES ALVIN HAWKINS,

Plaintiff-Appellant,

versus

DAN SMITH, Sheriff,
Bell County Sheriff Dep't,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-94-CV-006

- - - - -
(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Venices Alvin Hawkins appeals the dismissal of his civil rights complaint as frivolous. An in forma pauperis complaint may be dismissed by the district court if it determines that the action is frivolous or malicious. 28 U.S.C. § 1915(d). A complaint is "frivolous" if it "lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992) (internal quotations

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

omitted). Section 1915(d) dismissals are reviewed for abuse of discretion. Id. at 1734.

It is unclear whether Hawkins was a pretrial detainee or a convicted prisoner at the time of the alleged constitutional violation. If Hawkins was a pretrial detainee, his claim should be reviewed under the Fourteenth Amendment to determine whether the conditions of his confinement amounted to punishment. See Bell v. Wolfish, 441 U.S. 520, 535, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979); Rankin v. Klevenhagen, 5 F.3d 103, 106 (5th Cir. 1993). However, if Hawkins was a convicted prisoner, his challenge should be reviewed under the Eighth Amendment to determine whether the conditions resulted in the "wanton and unnecessary infliction of physical pain," or exposed him to egregious physical conditions that deprived him of basic human needs. See Rhodes v. Chapman, 452 U.S. 337, 347, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981).

Hawkins has not alleged that he was placed in a cell with a leaky light fixture for punitive purposes, and he has not described conditions violative of the Eighth Amendment. At most, he has alleged that prison officials were negligent in failing to repair the leaky light fixture. Negligence alone will not state an action under § 1983. Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989). Moreover, "[u]nder section 1983, supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability." Thompkins v. Belt, 828 F.2d 298, 303 (5th Cir. 1987). There can be liability if a supervisor is

either personally involved in the constitutional deprivation or there is a causal connection between the supervisor's conduct and the violation. Id. at 304. Hawkins did not allege any facts in the district court from which it could be concluded that Sheriff Smith was personally involved in a constitutional deprivation.

Hawkins argues that another prisoner's civil rights were violated by being placed in the cell with the leaky light fixture after Hawkins was moved to another cell. Hawkins has no standing to assert this claim. See Allen v. Wright, 468 U.S. 737, 751, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984).

Hawkins makes several allegations about jail grievance procedures and has moved to supplement the record on appeal with copies of documents related to the grievances. The district court denied Hawkins's motion to amend his complaint to add these claims and Hawkins does not challenge that denial. Because review of the claim would require us to make factual determinations, we do not consider the claim and DENY the motion to supplement the record on appeal. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Hawkins contends that the district court should have granted his motion for appointment of counsel and has moved this Court for appointment of counsel. Because this case does not present exceptional circumstances requiring the appointment of counsel, the district court did not abuse its discretion in denying the motion. See Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986); Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir.

1982). For the same reason, the motion for appointment of counsel filed in this Court is DENIED.

The district court's judgment is AFFIRMED.