

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-50496
Summary Calendar

DARRYL WAYNE BELL,

Plaintiff-Appellant,

VERSUS

J. A. LYNAUGH, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Texas

(W-94-CV-38)

(March 31, 1995)

Before JONES, BARKSDALE and BENAVIDES, CIRCUIT JUDGES.

PER CURIAM:*

Darryl Wayne Bell ("Bell") appeals the district court's dismissal of his civil rights complaint. Finding no reversible error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

FACTS AND PROCEDURAL HISTORY

Proceeding pro se and in forma pauperis ("IFP"), Bell, an inmate at the Hughes Unit of the Texas Department of Criminal Justice ("TDCJ"), filed a civil rights complaint against TDCJ Executive Director J. Lynaugh, TDCJ Director J. Collins, TDCJ Deputy Director W. Scott, Regional Director M. Moore, Hughes Unit Warden J. Gardner, Assistant Warden C.F. Streetman, and "various John and Jane Does." In very terse language, Bell alleged that the defendants violated his federal rights by refusing to exchange or provide compensation to Bell for defective "earbuds" (radio earphones) and "mono ext. cables" sold to Bell by the defendants, by Streetman's refusal on two specific dates and prior occasions to comply with Bell's request for withdrawal of funds from Bell's prison account, and by the allegation that "[b]lack prisoners are denied various types of haircuts allowed by T.D.C.J.-I.D. and enforcing racism."

Due to the absence of specific facts and the overabundance of conclusional allegations, the magistrate judge ordered Bell to file an amended complaint "to state specific facts demonstrating a constitutional violation, and to specify how each of the named superviosry [sic] [d]efendants was involved in the alleged violations." The magistrate judge informed Bell that, if Bell failed to comply timely with this order, a recommendation of dismissal would be issued. Bell moved to dismiss the magistrate

judge, a motion which the district court denied with warning to Bell of the consequences of subsequent frivolous motions.

In response to the magistrate judge's order, Bell noted that the request for an amended complaint "ha[d] a complete absence of any specific request other than to state specific facts demonstrating a constitutional violation and to specify how each of the named supervisory [sic] defendants was involved in the alleged violation which is already [sic] in the complaint." Bell restated his facts as follows:

All defendants have been selling and sold plaintiff defective earbuds and mono ext. cables and refused to exchange or compensate. C.F. Streetman on 1/10/94, 1/27/94, and prior occasions [sic] with supervisors knowledge denied, obstructed, ect. [sic] access to courts, media, ect. [sic] by withholding requested withdrawals from plaintiff's account. Black's [sic] are denied various approved types of haircuts and subject to racial enforcement.

Bell also moved to supplement his complaint.

The magistrate judge noted the deficiency of Bell's response and issued another order giving Bell the opportunity to "amend his complaint as specified in the [earlier] order." The order also expressly instructed Bell to include specific facts to support his claims of denial of access to courts and of racially discriminatory haircuts. There was no express instruction concerning Bell's earphones claim or Bell's reference to a denial of access to the media found in his restatement of facts. The magistrate judge warned Bell that failure to comply timely and fully with the order would result in a recommendation of dismissal.

Bell moved for leave to file an amended complaint, expressing a desire to add new parties and allegations. The motion was filed on the date of entry of the magistrate judge's order. The magistrate judge denied the motion in light of its prior order to amend. In his amended complaint, Bell alleged that "St[r]eetman's refusal to withdraw funds from [Bell]'s account and retaliation has caused an unfavorable ruling in [Bell]'s complaint." Bell explained his racial discrimination claim in the following manner:

[B]lacks aren't allowed to use one of the different attachments that connect to the hairclippers because supervisors said it leave an afro but other races are allowed to use it although its purpose and design is for [b]lacks. Specific type of haircut denied to blacks are the kind given with the denied attachment; non-black inmates are allowed to have the haircut with the attachment denied to blacks; the particular policy or rule was authorized by supervisors verbally; the persons who refused the haircut got orders from defendants: he himself request if he wants such haircuts; the reason given for the refusal is because it leaves an afro and black[s] have the wrong type of hair. [T]he harm suffered as a result of not being allowed that particular hair style is emotional distress, mental anguish, denial of equal rights, denial of freedom of expression, and racial discrimination.

Bell also provided "a sample copy of his proposed amended complaint," a conclusional sentence.

In his report and recommendation, the magistrate judge recommended dismissing Bell's complaint as frivolous and for failure to prosecute. The magistrate judge concluded that Bell failed to plead sufficient facts to overcome the defendants' qualified immunity on any of the claims. The magistrate judge began his report by noting Bell's twelve suits filed in the Western District of Texas and two or three suits pending in the Southern

District of Texas. After reviewing the orders and filings in the case at hand, the magistrate judge found that "Bell has failed or refused to provide anything more than terse, conclusory information." The magistrate judge also noted that, in a prior suit, Bell had refused to provide factual detail or to cooperate with the court.¹ In light of the documented reluctance on Bell's part, in this case and in prior suits, to provide the necessary factual details, the magistrate judge concluded that a Spears² hearing would be a waste of judicial resources. Besides recommending dismissal as frivolous and for failure to prosecute, the magistrate judge recommended a \$100 sanction. Bell was ordered to show cause in writing why the sanction should not issue.

Bell filed objections to the report. He argued that the magistrate judge erred in his assessment of the three claims -- withdrawal of funds, defective merchandise, and haircuts -- that his complaint and responses were sufficient to prevent dismissal for failure to prosecute or for frivolousness, and in response to the sanction recommendation, that the magistrate judge was malicious and had misstated Bell's litigation history.

After *de novo* review, the district court analyzed Bell's complaint, concluded it was frivolous, adopted the magistrate judge's report, and ordered a \$50 sanction with direction to the

¹The magistrate judge noted that Bell, in response to a court-ordered questionnaire, argued that the questions were repetitive, irrelevant, delayed the judicial process, and would lead to Bell's incrimination.

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

clerk of the court to refuse subsequent lawsuits submitted by Bell until the satisfaction of the sanction or until proper authorization. The district court did not address expressly whether Bell's suit was properly dismissed as failure to prosecute. Bell appeals.

LAW AND ARGUMENT

I. Did The District Court Abuse Its Discretion In Dismissing Bell's Three Claims Of Constitutional Violation?

Bell challenges the district court's dismissal for frivolousness under 28 U.S.C. § 1915(d). An IFP complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). We review the dismissal for an abuse of discretion. Id. at 1734.

1. *Defective Merchandise.* -- Bell contests the district court's conclusion that no due process violation occurred by the defendants' refusal to exchange the defective earphones. As alleged by Bell, the earphones, which came with a ninety-day exchange guarantee, were exchanged several times from the date of purchase, July 5, 1993, to October 5, 1993. Nothing indicates that any constitutional property right may have been infringed. His argument on appeal does not mention the "mono ext. cables." Therefore, any argument concerning those items is deemed abandoned. See Eason v. Thaler, 14 F.3d 8, 9 n.1 (5th Cir. 1994).

2. *Haircuts.* -- Bell argues that the district court erred in its assessment of his racial-discrimination claim concerning haircuts. On appeal, Bell apparently is contending that his claim does not challenge the TDCJ regulations, which allow hairclipper attachments. He argues that his claim is against the racially-biased enforcement actions of the Defendants, who do not allow blacks to use the attachments.

But as alleged by Bell, the attachment to the hairclipper is not used on black prisoners because it creates an afro style, a style prohibited by the regulations. Thus, the enforcement action of the Defendants is mandated by the regulations, which Bell does not challenge the constitutionality thereof. Further, as the district court found, the purpose of grooming restrictions is to prevent inmates from hiding weapons in their hair; to prevent radical changes in appearance in the event of an escape; and to prevent health problems such as head lice. "[R]easonable steps taken to enforce reasonable security needs in a prison are not violative of a prisoner's constitutional rights." McFadden v. Lucas, 713 F.2d 143, 147 (5th Cir.), *cert. denied*, 464 U.S. 998 (1983). The district court's dismissal of this claim as frivolous is not an abuse of discretion.

3. *Withdrawal of Funds.* -- Bell argues that the district court's assessment of his denial-of-access-to-court claim is not supported by the record. Bell alleged that, on two specified occasions and other prior instances, Streetman denied Bell's request for withdrawal of funds and that this denial caused the

denial of Bell's access to court. On appeal, Bell alleges that Streetman's denial of the requested funds prevented Bell's purchase of his trial records and that Streetman denied three subsequent transfers of funds for other matters to pay the court. The right to access to the court has not been "extended . . . to encompass more than the ability of an inmate to prepare and transmit a necessary legal document to a court." Brewer v. Wilkinson, 3 F.3d 816, 821 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1081 (1994). The sparsely-worded allegations by Bell do not involve such a denial. Moreover, in light of Bell's IFP status in this and prior cases, see Bell v. Doreman, No. 94-50358 (5th Cir. Aug. 15, 1994) (unpublished), it is unclear what necessary document, if any, Bell was prevented from filing because he lacked the necessary funds. The district court did not abuse its discretion in concluding this claim legally frivolous.

4. *Obstruction to Media.* -- Bell's initial complaint did not mention obstruction to media. Bell's first response to the order to amend his complaint with factual detail added a vague reference to obstruction to media, but it was neither mentioned nor explained in his second response to the magistrate judge's order. For the first time on appeal, Bell alleges that his denied request to withdraw funds from his prison account prevented him from purchasing a newspaper. In light of the opportunities the district court provided Bell to add facts concerning this claim and his failure to utilize those opportunities, his one-sentence argument that the district court failed to address his obstruction-to-media

claim is meritless. See Macias v. Raul A. (Unknown), Badge No. 153, 23 F.3d 94, 99 (5th Cir.), cert. denied, 115 S. Ct. 220 (1994).

5. *Dismissal with Prejudice.* -- Under liberal construction, Bell's argument includes the position that dismissal with prejudice was inappropriate because, with more specific pleading, his complaint could overcome frivolousness. In light of the two opportunities Bell had in which to amend his complaint -- Bell's sparsely worded amended complaints and Bell's contention in the district court that he had provided the specific details -- this argument lacks merit. Therefore, the district court did not abuse its discretion by dismissing Bell's claims with prejudice.³

II. Did The District Court Abuse Its Discretion By Imposing Sanctions?

Bell argues that the district court erred in imposing sanctions. Bell contends that his past litigation efforts were not completely frivolous, that the district court and magistrate judge are malicious, that the magistrate judge is partial toward prison guards, and that any problem with the lack of specificity in Bell's

³To the extent that Bell's terse, conclusional facts presented to the district court could be liberally construed as alleging possible deprivations of a federal right, the magistrate judge's recommendation, adopted by the district court, included dismissal for failure to prosecute. Bell's arguments do not mention the dismissal for failure to prosecute. Because the district court's order focused primarily on dismissal under § 1915(d), and because such a dismissal was not an abuse of discretion, it is unnecessary to examine the propriety of the Rule 41(b) dismissal.

complaint is a result of the magistrate judge's failing to utilize a proper questionnaire. "[R]eview of a district court's sanctions against vexatious or harassing litigants is conducted under the abuse of discretion standard." Mendoza v. Lynaugh, 989 F.2d 191, 195 (5th Cir. 1993).

The district court noted that the sanction was appropriate based on Bell's "continuous abuse of the system." Although not specifically mentioned, the district court had warned Bell of possible sanction in a prior suit. See Doreman, No. 94-50358 at 3. The magistrate judge noted the many complaints filed by Bell in the Western District of Texas.

The record displays Bell's lack of cooperation with the district court in providing the court the necessary factual detail in order to evaluate Bell's complaint. In light of the factual detail provided to this Court in Bell's appellate brief -- many of these details were absent from the district court record -- Bell's argument that the magistrate judge erred in the manner of asking for more details is specious. In light of Bell's history of frivolous litigation, noted by the district court and known by this Court, the district court did not abuse its discretion in sanctioning Bell in this case. See Gelabert v. Lynaugh, 894 F.2d 746, 748 (5th Cir. 1990).

CONCLUSION

For the foregoing reasons, the district court's decision is
AFFIRMED.