

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50723
Summary Calendar

DANNY LEON LUCAS,

Plaintiff-Appellant,

v.

J.M. GARNER, Warden,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(A 94 CA 227)

June 30, 1995

Before KING, JOLLY, and DEMOSS, Circuit Judges.

PER CURIAM:*

Danny Leon Lucas appeals from the district court's denial of his in forma pauperis 42 U.S.C. § 1983 action on "frivolous" grounds. Having examined the arguments, we affirm the judgment of the district court.

I. FACTUAL AND PROCEDURAL BACKGROUND

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

On June 5, 1993, Lucas alleged that defendant S. Bell, a correctional officer at the Alfred D. Hughes unit of the Texas Department of Criminal Justice, denied Lucas a mid-day meal because she was "high" and she did not want to work in Lucas's section. Bell alleged that Lucas was engaged in disruptive sexual behavior, and she indicated that Lucas would not remove his hands from his genitals to retrieve his food tray.

According to Lucas, he was told that he forfeited his lunch because he refused to stop masturbating to accept his lunch tray. Lucas claims that Bell's denial of his lunch violated a prison rule that no food shall be denied as a disciplinary sanction of an individual inmate. In addition, Lucas alleges that defendant Garner, the Senior Warden of the Hughes unit, violated Lucas's rights by not affording him an impartial hearing on his grievances arising out of the food incident, by denying Lucas relief on his grievances and appeals, and by conspiring with Bell to deny Lucas of his rights.

Lucas filed suit against the defendants in their individual and official capacities under 42 U.S.C. § 1983. He alleged a retaliation claim, a conspiracy claim, an Eighth Amendment violation, and a Fourteenth Amendment violation, and he requested injunctive and declaratory relief, as well as compensatory and punitive damages. The defendants filed a motion to dismiss pursuant to 28 U.S.C. § 1915(d), and the magistrate judge recommended granting the motion. The district court adopted the

findings of the magistrate and dismissed Lucas's claims with prejudice. Lucas appeals from this determination.

II. STANDARD OF REVIEW

Dismissal of an in forma pauperis complaint is appropriate if the district court determines that it is frivolous, i.e., that "it lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). A complaint is legally frivolous under 28 U.S.C. § 1915(d)¹ if it is premised on an "indisputably meritless legal theory." Id. at 327. We review a district court's § 1915(d) dismissal using an abuse of discretion standard. Denton v. Hernandez, 112 S. Ct. 1728, 1734 (1992).

III. ANALYSIS AND DISCUSSION

A. Food Deprivation Claims

Liberally construing Lucas's arguments, he appears to contend that the denial of his lunch violated his Eighth Amendment and Fourteenth Amendment rights. In § 1983 actions challenging prison conditions under the Eighth Amendment, "a showing of significant injury is a prerequisite to recovery." McCord v. Maggio, 927 F.2d 844, 849 & n.1 (5th Cir. 1991); see also Strickler v. Waters, 989 F.2d 1375, 1381 (4th Cir. 1993) ("[I]n order to withstand summary judgment on an Eighth Amendment challenge to prison conditions[,] a plaintiff must produce evidence of a serious or significant physical or emotional injury resulting from the challenged

¹ The statute provides that "[t]he court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d).

conditions."). Lucas, however, makes no allegation or suggestion of any physical or emotional injury from the mid-day meal deprivation. Moreover, we have held that "[t]he Eighth Amendment does not require that prisoners receive three meals a day; rather, the [E]ighth [A]mendment requires that jails provide inmates with well-balanced meals, containing sufficient nutritional value to preserve health." Grissom v. Patterson, No. 92-7244, slip op. at 13 (5th Cir. Dec. 27, 1993) (unpublished opinion) (internal quotation omitted); see also Atkins v. Kasper, No. 93-2927, slip op. at 4 (5th Cir. Sept. 6, 1994) (unpublished opinion) ("[Plaintiff] does not have even a colorable claim that denial of a single meal -- or, for that matter, three single meals on three different, non-consecutive days -- rises to the level of cruel and unusual punishment, if indeed it constitutes punishment at all."). Lucas presents no evidence to suggest that his two other meals on that day were nutritionally inadequate. We find no abuse of discretion in the district court's dismissal of Lucas's Eighth Amendment claim.

Lucas also asserts that he was denied his due process rights under the Fourteenth Amendment because his meal was withheld as punishment without a disciplinary hearing. Lucas alleges that a prison rule states that "no food or meals shall be withheld as a disciplinary sanction for an individual inmate."² In Atkins, we noted that "state prison regulations couched in mandatory language that explicitly limit a prison official's discretion may create

² A copy of the rule is not present in the record.

liberty interests." Atkins, No. 93-2927, slip op. at 4. Thus, Lucas apparently asks us to recognize that depriving him of a mid-day meal without notice and a pre-deprivation hearing violates the prison's proscription of denying food as a disciplinary sanction, and thereby violates his liberty interest. Unfortunately for Lucas, however, his loss of this single meal cannot properly be characterized as a disciplinary sanction at all.

In Atkins, the prisoner-defendant also lost the right to eat a single meal when he was ejected from the dining hall for causing a commotion. See id. at 5. In that case, we observed that "Atkins lost the right to eat the single meal, the deprivation of which he complains of here, as a natural and predictable consequence of the meal-time disturbance that he created. He missed that meal only as the incidental result of a prison official's effort to maintain order in the dining hall, not as a disciplinary sanction for that disturbance" Id. As we concluded, "[Atkins] clearly was not denied that meal as a disciplinary sanction; ergo the prison regulation prohibiting denial of food as a disciplinary sanction -- and any liberty interest possibly created by the adoption of that regulation -- was never implicated; ergo the Due Process Clause was never implicated." Id. at 6.

We believe that the situation in Lucas's case is similar to Atkins's situation. Lucas's own allegations confirm that some sort of confrontation and ruckus occurred between Bell and Lucas when Bell was delivering the meals. The disruption could be viewed by inmates in other cells, and the disorderliness could have

potentially spread. In these circumstances, we find that although Bell's "skipping" of Lucas's cell during meal service was arguably not the optimal response, it was a reasonable effort to quell the confrontation sparked between the two. Thus, Lucas missed his meal as an incidental result of a prison official's effort to maintain order, and not as a disciplinary sanction. The magistrate judge appeared to use this same rationale. As he stated, "Nor did the denials of food constitute a punishment without due process. Plaintiff's own allegations make clear that each of the denials were done on the spur of the moment, as an impromptu reaction of the guards to the confrontation at hand." We conclude that Lucas's due process claim lacks an arguable basis in law; thus, we find no abuse of discretion in the district court's dismissal.³

B. Conspiracy Claim

Lucas makes the general claim that Garner and Bell entered into a conspiracy to commit illegal acts against him. Unfortunately, Lucas asserts this conspiracy claim with no factual support at all, and "[m]ere conclusory allegations of conspiracy cannot, absent reference to material facts, state a substantial claim of federal conspiracy under 42 U.S.C.A. § 1983." Hale v. Harney, 786 F.2d 688, 690 (5th Cir. 1986) (internal quotation omitted); see Wilson v. Budney, 976 F.2d 957, 958 (5th Cir. 1992).

³ Lucas argues that Warden Garner also violated his due process rights by denying Lucas's grievance about Bell's conduct. Lucas's only factually-grounded allegation amounts to a claim of a denial of due process because his grievances did not bring the result he desired. Such a complaint does not give rise to a cognizable due process claim, and the district court did not abuse its discretion in dismissing it.

Because Lucas alleged no facts to support his allegations of conspiracy, the claim was properly dismissed.

C. Retaliation Claim

Lucas also contends that Bell denied his lunch and Garner denied his grievances in retaliation for Lucas's writ-writing activities. Of course, Lucas's own allegations indicate that his lunch was denied because of the immediate circumstances facing Bell when she attempted to deliver Lucas's lunch -- not because of Lucas's writ writing in prison. Nevertheless, Lucas has not alleged any facts to indicate that Garner or Bell has taken retaliatory action to stop Lucas's writ writing. A prisoner's claim of retaliation must be supported by factual allegations that raise an inference of retaliation. See Whittington v. Lynaugh, 842 F.2d 818, 819 (5th Cir. 1988). Lucas's general claim of retaliation does not rise to this level.

IV. CONCLUSION

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