UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60335
Summary Calendar

ROGER L. HENTZ,

Plaintiff-Appellant,

VERSUS

M. J. MCCARRAN, Postal Inspector, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
(4:93-CV-228-B-D)

(February 6, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Proceeding *pro se* and *in forma pauperis*, Roger L. Hentz, an inmate at the Mississippi State Penitentiary, alleged violations of his constitutional rights in connection with a prison disciplinary proceeding. The district court dismissed the complaint. We **AFFIRM**.

I.

On December 2, 1992, the Parole Board approved parole for Hentz, but contingent upon his completion of the penitentiary's

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

alcohol and drug program. On February 24, 1993, before completing the program, Hentz was issued a Rules Violation Report (RVR), based upon a postal inspector's report of Hentz's involvement in a mail fraud scheme. Following a disciplinary hearing, Hentz was found guilty of the rules violation; his prison classification was changed and he was placed in close confinement. Later, the Parole Board rescinded Hentz's conditional parole for a period of one year based on the RVR.

On August 9, 1993, Hentz filed this action, alleging generally violations of his due process rights, equal protection, and the prohibition against cruel and unusual punishment, as well as unspecified state law claims. In conjunction with filing the complaint, Hentz moved for a temporary restraining order or preliminary injunction.

Following a ***Spears*** hearing, the magistrate judge recommended denial of the TRO and that the case be dismissed with prejudice for failure to state a claim under § 1983; the district court adopted and approved the magistrate judge's report and recommendation.

II.

In dismissing Hentz's complaint, the district court used language similar to Fed. R. Civ. P. 12(b)(6) -- "failure to state a claim cognizable under § 1983" -- thus suggesting that Rule was the basis for the dismissal. Normally, a plaintiff with an arguable claim is accorded notice and an opportunity to be heard before a court may dismiss a complaint under that Rule. ***Neitzke v. Williams***, 490 U.S. 319, 329-30 (1989). Because the court conducted

a hearing pursuant to ***Spears v. McCotter***, 766 F.2d 179 (5th Cir. 1985), however, it is obvious that the dismissal of Hentz's *in forma pauperis* complaint was pursuant to 28 U.S.C. § 1915(d). Thus, we review the dismissal under § 1915(d), recognizing that "a complaint filed *in forma pauperis* is not automatically frivolous within the meaning of § 1915(d) because it fails to state a claim." *See* ***Neitzke***, 490 U.S. at 331.

When a litigant seeks permission to proceed as a pauper under § 1915, the district court may scrutinize the basis of the complaint and, if appropriate, dismiss the case prior to service of process, as was done here. ***Green v. McKaskle***, 788 F.2d 1116, 1119 (5th Cir. 1986). We review a § 1915(d) dismissal for an abuse of discretion. ***Denton v. Hernandez***, ___ U.S. ___, ___, 112 S. Ct. 1728, 1734 (1992); ***Graves v. Hampton***, 1 F.3d 315, 317 (5th Cir. 1993).

A dismissal under § 1915(d) is appropriate if the claims lack an arguable basis in law or in fact. ***Denton***, ___ U.S. at ___, 112 S. Ct. at 1733; ***Eason v. Thaler***, 14 F.3d 8, 9 (5th Cir. 1994). But, in determining whether the district court abused its discretion in dismissing Hentz's complaint, we construe the allegations liberally. *E.g.*, ***Macias v. Raul A. (Unknown), Badge No. 153***, 23 F.3d 94, 96 (5th Cir.), *cert. denied*, 115 S. Ct. 220 (1994). Despite such a construction, Hentz's allegations are predominately unclear and conclusional; claimants in a § 1983 action are required to state specific facts and not mere conclusional allegations. ***Brinkmann v. Johnston***, 793 F.2d 111, 113

(5th Cir. 1986). One of the principal mechanisms available to district courts to remedy inadequate prisoner complaints is the ***Spears*** hearing. Based on that hearing, a court is able to identify better the gist of the complaint.

As with his complaint, Hentz's brief presents, in most respects, conclusional claims, that seek improperly to incorporate briefs filed in the district court. He appears to present the following issues.

A.

Hentz's main allegation, as developed at the ***Spears*** hearing, is that the Parole Board created a liberty interest by granting him parole contingent upon his completion of the alcohol and drug program; and that the recision of the parole, because of the RVR, denied him procedural due process. This contention is without merit. Under the Mississippi law creating parole, the Parole Board is granted "absolute discretion"; thus, Hentz does not have a constitutionally recognized liberty interest in parole. ***Scales v. Mississippi State Parole Bd.***, 831 F.2d 565, 566 (5th Cir. 1987). Furthermore, the decision to conditionally grant Hentz parole could not be construed as creating a liberty interest; parole was contingent upon his successful completion of the drug and alcohol program. When Hentz did not meet that condition due to his disciplinary infraction, he failed to meet that condition precedent. No constitutional liberty interest is implicated.

B.

Relying on ***Wolff v. McDonnell***, 418 U.S. 539 (1974), Hentz next contends that the disciplinary hearing on the RVR violated his due process rights because the only evidence against him was hearsay; to wit, the findings made by a postal inspector and submitted to the disciplinary committee via letter. In reviewing state prison proceedings, the role of the federal courts is narrow. "The Supreme Court has articulated for the federal courts a policy of minimum intrusion into the affairs of state prison administration; state prison officials enjoy wide discretion in the operation of state penal institutions." ***Williams v. Edwards***, 547 F.2d 1206, 1211-12 (5th Cir. 1977). In a § 1983 action, in reviewing prison administrative actions, a court will uphold the administrative decision unless it was arbitrary or capricious. ***Smith v. Rabalais***, 659 F.2d 539, 545 (5th Cir. 1981), *cert. denied*, 455 U.S. 992 (1982).

Under ***Wolff***, Hentz was entitled to 1) written notice of the charges against him at least 24 hours before the hearing; 2) a written statement of the fact finders as to the evidence relied upon and the response for the disciplinary action; and 3) the opportunity to call witnesses and present documentary evidence in his defense, unless these procedures would create a security risk in the particular case. ***Wolff***, 418 U.S. at 563-66. Hentz does not contend that he did not receive these protections; he fails to present a constitutional violation. ***See Walker v. Bates***, 23 F.3d 652, 656 (2d Cir. 1994) (prison disciplinary hearings rely heavily

on hearsay evidence), *petition for cert. filed*, 63 U.S.L.W. 3092 (U.S. July 25, 1994) (No. 94-158).[2]

C.

Next, Hentz claims that the penitentiary's practice of allowing members of the disciplinary committee also to serve as members of the classification committee is unconstitutional because this precludes an impartial classification committee. (In support, Hentz attached an order from a Mississippi magistrate which stated that an April 1992 order had directed that this practice be terminated.) Hentz does not have a constitutionally protected liberty interest in his classification. ***Olim v. Wakinekona***, 461 U.S. 238, 250 (1983) (a protected liberty interest arises only if the state places substantive limits on the official's discretion). Under Mississippi law, Hentz had no right to a particular classification. Miss. Code Ann. §§ 47-5-99 - 47-5-103 (1993); ***Tubwell v. Griffith***, 742 F.2d 250, 253 (5th Cir. 1984). Furthermore, the Due Process Clause does not, by itself, endow a

[2] Hentz also suggests that his due process rights were violated because the mail fraud scheme which was the basis for the RVR was four years old when he was served with the RVR; Hentz suggests that, instead, prison officials had only 72 hours following the fraud in which to charge him. The RVR indicates that Hentz's initial contact with the victim of the scheme was in November 1989, but then intimates that the scheme continued for a lengthy period of time. Regardless, the RVR states that, after a lengthy investigation by postal inspectors, prison officials were notified of the scheme on February 23, 1993; the RVR was served on Hentz the next day.

prisoner with a protected liberty interest in the location of his confinement. ***Meachum v. Fano***, 427 U.S. 215, 225 (1976).[3]

D.

Finally, Hentz appears to contend that the district court erred by denying his TRO motion; he maintains that because the ***Spears*** and TRO hearings were conducted simultaneously, he was unable to present his claims. Hentz denominated his motion as a request for a TRO or a preliminary injunction. (The relief he seeks is a preliminary injunction, because he seeks relief that goes to the merits of the underlying action which, if granted, would exceed the ten-day durational limit of a TRO. *See* Fed. R. Civ. P. 65(b).) To obtain injunctive relief, a movant must show, *inter alia*, a substantial likelihood that he will prevail on the merits. ***Mississippi Power & Light Co. v. United Gas Pipe Line Co.***, 760 F.2d 618, 621 (5th Cir. 1985). As evident from the above discussion, Hentz did not made such a showing. And, the simultaneous hearings did not prevent him from presenting his case. The district court did not abuse its discretion by denying the motion.

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[3] Hentz contends also that he raised the issue of the loss of telephone privileges which the district court did not consider. The telephone privilege issue was raised only in his brief in support of his motion for the TRO. The contention was not raised in his original complaint, at the ***Spears*** hearing, or in a brief filed pursuant to the magistrate judge's request at the conclusion of the ***Spears*** hearing. Thus, it was not a part of his complaint, and the district court was not obligated to consider this contention.

III.

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

AFFIRMED.