

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-60435  
Summary Calendar

---

CURTIS ANTONIO WAY,

Plaintiff-Appellant,

versus

LEE ROY BLACK, ET AL.,

Defendants-Appellees.

---

Appeal from the United States District Court  
For the Northern District of Mississippi  
(91-CV-44)

---

(January 3, 1995)

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

PER CURIAM:\*

Curtis Antonio Way, an inmate of the Mississippi Department of Corrections proceeding *pro se* and *in forma pauperis*, appeals dismissal of his civil rights lawsuit as frivolous under 28 U.S.C. § 1915(d) following a **Spears**<sup>1</sup> hearing. Finding no error and no abuse of discretion, we affirm.

Way complains of three instances of discipline, each involving resistance to an order from a corrections officer. In the first

---

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

<sup>1</sup>**Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985).

incident he argued with a prison guard who directed him to a particular seat in the dining room.<sup>2</sup> In the second incident he took issue with a lieutenant who ordered him to return his typewriter to his cell. On the third occasion he ignored an order to accompany a guard outside the dining room after receiving a reprimand for talking too loud. Way admits the foregoing conduct but nevertheless attributes the discipline imposed to retaliation for his work as a writ writer and for filing grievances in his own behalf; such retaliation, he maintains, violates the first and fourteenth amendments, thus implicating 42 U.S.C. § 1983.

A complaint is frivolous within the meaning of 28 U.S.C. § 1915(d) when it lacks an arguable basis in either fact or law. Section 1915(d) gives the district court authority to "pierce the veil of the complaint's factual allegations" to determine factual frivolousness.<sup>3</sup> The **Spears** hearing provides the mechanism. After such a hearing, the district court exercised that authority. We find neither error nor abuse of discretion in its ruling. Way's allegations make abundantly clear that he was disciplined for disobeying orders. They belie his conclusionary assertion of illicit motivation. Activity as a writ writer and the filing of grievances do not provide a shield for one to defy lawful orders with impunity.

AFFIRMED.

---

<sup>2</sup>Way complains of a temporary transfer out of his writ writer assignment as a result of this infraction.

<sup>3</sup>**Denton v. Hernandez**, 112 S.Ct. 1728, 1733 (1992), quoting **Neitzke v. Williams**, 490 U.S. 319, 327 (1989).