UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-1281

(Summary Calendar)

JOHN EDWARD TWEEDY,

Plaintiff-Appellant,

VERSUS

EDDIE G. BOGGS, Sheriff and
DR. AUTHER RAINS, a/k/a
Arthur Rains,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Texas
(CA 3 91 2462 T)

(January 5, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Proceeding pro se and in forma pauperis, pretrial detainee John Edward Tweedy filed suit under 42 U.S.C. § 1983 (1988). Tweedy alleged that: (1) the conditions of his confinement violated constitutional standards; (2) he was denied access to the courts; and (3) he was denied reasonable medical care. The district court dismissed all of Tweedy's claims as frivolous,

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* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

pursuant to 28 U.S.C. § 1915(d) (1988). Finding that the district court abused its discretion in dismissing some of Tweedy's claims, we affirm in part, and reverse and remand in part.

I

Tweedy was a pretrial detainee in the Johnson County Law Enforcement Center ("the Center"). He alleged that the conditions of his confinement at the Center violated constitutional standards.[1] First, Tweedy claimed that the Center was overcrowded due to the influx of large numbers of contract prisoners. Second, he alleged that convicted prisoners and "medical inmates" were housed with pretrial detainees. Tweedy claimed these conditions have caused him to suffer mental stress, resulting in irreparable harm.

Tweedy also alleged that he was denied access to the courts due to inadequate law library facilities and the unavailability of certified mail. Furthermore, Tweedy claimed that he did not receive reasonable medical treatment for his chronic bronchitis. He named as defendants Johnson County Sheriff Eddie G. Boggs and Dr. Arther Rains, a medical officer at the Center.

The district court referred the case to a magistrate. Based

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[1] Tweedy also claimed that his confinement at the Center violated the Texas Jail Standards, *see* Brief for Tweedy at 5, 14-15, and consequently, constitutional standards as well. We disagree. "Although state standards may sometimes serve as a useful guide in a federal court's determination and redress of constitutional deprivations, a violation of state law, without more, will not justify federal judicial intervention." *Smith v. Sullivan,* 611 F.2d 1039, 1045 (5th Cir. 1980) (citations omitted). Therefore, the court properly dismissed this claim as frivolous.

upon Tweedy's responses to interrogatories, the magistrate recommended that the suit be dismissed as frivolous. Adopting the magistrate's recommendation, the district court dismissed the suit as frivolous, pursuant to 28 U.S.C. § 1915(d). Tweedy appeals, contending that the district court abused its discretion in dismissing his claims.[2]

II

We review a dismissal of an IFP complaint under § 1915(d) for abuse of discretion. *Denton v. Hernandez,* ___ U.S. ___, 112 S. Ct. 1728, 1734, 118 L. Ed. 2d 340 (1992). An IFP complaint may be dismissed under § 1915(d) as frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams,* 490 U.S. 319, 325, 109 S. Ct. 1827, 1831, 104 L. Ed. 2d 338 (1989).

A

Tweedy alleges that the district court abused its discretion in not finding that the conditions of his confinement violated constitutional standards. On appellate review, the proper inquiry is whether conditions accompanying pretrial detention "amount to punishment of the detainee . . . [because] a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Bell v. Wolfish,* 441 U.S.

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[2] Tweedy also asserts on appeal that the district court erred in not serving his complaint upon defendants, Sheriff Boggs and Dr. Rains. *See* Brief for Tweedy at 2. However, 28 U.S.C. § 1915(d) specifically authorizes the dismissal of an IFP suit at any time, including prior to service of process, if the court is satisfied that the action is frivolous. *See* 28 U.S.C. § 1915(d); *Holloway v. Gunnell,* 685 F.2d 150, 152 (5th Cir. 1982).

520, 535, 99 S. Ct. 1861, 1872, 60 L. Ed. 2d 447 (1979). "[I]n determining whether particular restrictions and conditions accompanying pretrial detention amount to punishment in the constitutional sense . . . [a] court must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose."[3] *Id.* at 538, 99 S. Ct. at 1873.

Tweedy claimed that the Center was overcrowded due to the classification of federal inmates with state inmates. This allegation failed to state a constitutional violation. Tweedy does not suggest that the conditions of which he complains were imposed as punishment. By Tweedy's own admission, the classification of prisoners at the Center was based on economic, not punitive, reasons. *See* Record on Appeal at 7. Moreover, Tweedy does not allege that he has ever been assigned to a cell with too many prisoners. *See id.* at 89-90. He only alleges that the Center is "often overcrowded," which he claims has caused him mental stress. Pretrial detainees are not entitled to a stress-free atmosphere under the due process clause. *See Cupit v. Jones,* 835 F.2d 82, 86 (5th Cir. 1987). Therefore, the district court properly dismissed this claim as frivolous.

Tweedy also alleged that Sheriff Boggs indiscriminately

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[3] We recognize that had the conditions at the Center resulted from the negligence of Sheriff Boggs, then we would not engage in a *Bell* analysis of focusing on the purpose of the jail's conditions to decide whether unconstitutional punishment occurred. *See Medina v. O'Neill,* 838 F.2d 800, 803 (5th Cir. 1988) ("As we recently observed, the Supreme Court has shifted ground since *Bell,* deciding that negligence alone does not trigger due process.").

housed him with convicted prisoners before his trial.[4] *See* Record on Appeal at 7; Brief for Smith at 5. The magistrate did not address this claim in his report and recommendation. *See* Record on Appeal at 73-81. Thus, we cannot determine whether Tweedy's claim was frivolous. *See Denton,* 112 S. Ct. at 1734 (holding that courts of appeals, when reviewing § 1915(d) claims for abuse of discretion, should consider whether the "court has provided a statement explaining the dismissal that facilitates intelligent appellate review"). Moreover, Tweedy apparently has alleged a non-frivolous legal issue. "The confinement of pretrial detainees indiscriminately with convicted persons is unconstitutional unless such a practice is `reasonably related to the institution's interest in maintaining jail security.'" *Jones v. Diamond,* 636 F.2d 1364, 1374 (5th Cir. 1981) (quoting *Bell,* 441 U.S. at 531, 99 S. Ct. at 1874), *cert. dismissed,* 453 U.S. 950, 102 S. Ct. 27, 69 L. Ed. 2d (1981). Accordingly, we remand to the district court to determine whether this claim has an

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[4] Tweedy's complaint alleged, in relevant part:

> D. That Federal inmates are being housed with State inmates, Whereas some Federal [inmates] are serving time as sentenced, and some are not. And whereas some State inmates are serving time as sentenced, and some are not. Yet all are being housed together.
>
> E. That Medical inmates were transferred from the Hospital section of the Jail to population sections, and mixed with state and Federal inmates, both sentenced and non sentenced, serving time and awaiting trial.

Record on Appeal at 7.

Because we read Tweedy's complaint liberally, *see United States v. Weatherby,* 958 F.2d 65, 66 (5th Cir. 1992) (construing pro se complaint liberally), we believe Tweedy stated a claim that he had been indiscriminately housed with convicted prisoners.

arguable basis in fact.

B

Tweedy also claims that the district court abused its discretion in finding that he had not been denied access to the courts. Prisoners have a constitutional right to "adequate, effective, and meaningful" access to the courts. *Bounds v. Smith,* 430 U.S. 817, 822, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977). "[T]he government is obliged to provide prisoners wishing to make a constitutional claim in a civil rights complaint or habeas corpus petition `with adequate law libraries or adequate assistance from persons trained in law.'" *Mann v. Smith,* 796 F.2d 79, 83 (5th Cir. 1986) (quoting *Bounds,* 430 U.S. at 828, 97 S. Ct. at 1498). "A denial-of-access-to-the-courts claim is not valid if a litigant's [legal] position is not prejudiced by the alleged violation." *Henthorn v. Swinson,* 955 F.2d 351, 354 (5th Cir.), *cert. denied,* ___ U.S. ___, 112 S. Ct. 2974, 119 L. Ed. 2d 593 (1992).

Tweedy alleged that he had been denied access to the courts because of inadequate library facilities,[5] which he claimed prevented him from timely filing a motion for bond reduction and examining trial on his theft charge.[6] *See* Record on Appeal at 40. However, Tweedy admitted that he was represented by counsel

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[5] Tweedy claimed that the library at the jail did not contain the Federal Rules of Civil Procedure, the Texas Civil Statutes, or a working typewriter. *See* Record on Appeal at 8.

[6] Tweedy faced charges of felony theft and driving without a license. *See* Record on Appeal at 38.

on this charge, *see id.* at 39-40, and that his counsel sent him a copy of the proposed motion. *See id.* at 40. Because Tweedy had the assistance of counsel,[7] he was not denied access to the courts regarding his theft charge. *See Bounds,* 430 U.S. at 830-31, 97 S. Ct. at 1499-1500 (holding that legal assistance from an attorney may satisfy right of access to the courts); *Mann,* 796 F.2d at 83-84 (same).

Tweedy also alleged that he had been denied access to the courts because the jail would not allow him to mail his filings by certified mail. Since Tweedy was proceeding IFP, he was not required to serve process by certified mail. *See* 28 U.S.C. § 1915(c) (1988). Therefore, Tweedy cannot show any prejudice which resulted from his inability to mail his filings by certified mail. Accordingly, the district court properly dismissed Tweedy's access-to-the-courts claim as frivolous.

C

Lastly, Tweedy alleged that the district court abused its discretion in not finding that he had been denied access to reasonable medical care. A pretrial detainee is entitled to a greater degree of medical care than a convicted inmate. *Rhyne v.*

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[7] Tweedy alleged that his counsel never filed the motion with the district court. *See* Record on Appeal at 40. However, nowhere in his complaint did Tweedy allege that his counsel was prevented from filing the motion by Sheriff Boggs. Therefore, at most, Tweedy stated a malpractice claim against his attorney, and not an access-to-the-courts claim against Sheriff Boggs. *See Mann,* 796 F.2d at 83 ("`[O]ur main concern [in applying the constitutional right of access to the courts] is protecting the *ability* of an inmate to prepare a petition or complaint.'" (quoting *Bounds,* 430 U.S. at 828 n.17, 97 S. Ct. at 1498 n.17)).

Henderson County, 973 F.2d 386, 391 (5th Cir. 1992). Prison officials must provide pretrial detainees with "`reasonable medical care unless the failure to provide it is reasonably related to a legitimate government objective.'" *See Cupit v. Jones,* 835 F.2d 82, 85 (5th Cir. 1987) (quoting *Jones v. Diamond,* 636 F.2d 1364, 1379 (5th Cir. 1981)).

Tweedy claimed that he suffered from chronic bronchitis. He alleged that the denial of medication for his condition effectively denied him access to reasonable medical care. We disagree.

Tweedy admitted that Dr. Rains hospitalized him and ordered a series of medical tests, including lab work, chest X-rays, and an electrocardiogram. *See* Record on Appeal at 54, 93. Based on those tests, Dr. Rains prescribed medication for a kidney ailment, rather than for Tweedy's alleged bronchitis. That Tweedy disagreed with Dr. Rains's diagnosis does not give rise to a § 1983 cause of action. *See Varnardo v. Lynaugh,* 920 F.2d 320, 321 (5th Cir. 1991) (holding that mere negligence, neglect, or malpractice does not give rise to a § 1983 cause of action). Because Tweedy's contentions amount only to a disagreement with his medical treatment, the district court properly dismissed this claim as frivolous.[8]

[8] Tweedy also alleged that Dr. Rains committed medical malpractice by prescribing medication for a kidney infection without personally examining him. Claims of medical malpractice are not actionable under § 1983. *See Varnado,* 920 F.2d at 321.

III

For the foregoing reasons, we **AFFIRM** in part and **REVERSE** and **REMAND** Tweedy's claim dealing with the prisoner housing assignments at the Center.