UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-7328
Summary Calendar

James D. Logan, ET AL,

Plaintiffs,

James D. Logan,

Plaintiff-Appellant

VERSUS

Lee Roy Black, Commissioner,
Mississippi Department of Corrections, ET AL,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Mississippi
(GC-90-280-B-O)

(January 21, 1993)

Before THORNBERRY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

THORNBERRY, Circuit Judge*:

James D. Logan, a prisoner housed in the protective custody unit of the Mississippi Department of Corrections, contends that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the district court abused its discretion in dismissing as frivolous his claims concerning denial of privileges. We hold that Logan's claims regarding cold food and denial of access to legal materials were properly dismissed as frivolous; however, his remaining claims have not been adequately developed to support the conclusion that they are frivolous. Accordingly, we **Affirm** in part, **Vacate** in part, and **Remand** for further proceedings consistent with this opinion.

Facts and Prior Proceedings

The protective custody unit houses those inmates who are in need of protection from other inmates. Logan and other prisoners filed this 42 U.S.C. § 1983 action pro se and **in forma pauperis** claiming that they are being denied privileges that are afforded to the general prison population without good reason. Specifically, Logan alleged:

(1) that visitation is more restricted than visitation for the general prison population;
(2) that protective custody inmates are not allowed to possess certain items that the other inmates may possess;
(3) that their exercise and communal time are more restricted than the general population inmates;
(4) that their meals are usually served cold;
(5) that they are placed in unnecessary restraints every time they leave their cells;
(6) that they have inadequate access to toiletry items;
(7) that their use of the prison law library is too restricted.

The district court dismissed the action as frivolous pursuant to 28 U.S.C. § 1915(d) without any development or exploration of

any of the claims through a **Spears**[1] hearing or otherwise.

About this same time, two other protective custody prisoners brought an action almost identical to Logan's action and their action was also dismissed as frivolous. **See Scrivner v. Mississippi Dept. of Corrections**, No. 91-7204 (5th Cir. Oct. 9, 1992).[2] They appealed the dismissal by the district court. Appellant Logan's appeal was originally consolidated with their appeal, however, Logan failed to file a brief in that appeal; Therefore his appeal was dismissed for failure to prosecute. **See Scrivner, supra.** Logan's appeal was reinstated after the opinion in **Scrivner** had issued.

Discussion

A section 1915(d) dismissal is reviewed for abuse of discretion.[3] A district court may dismiss a claim as frivolous if it lacks an arguable basis in law or in fact. **Ancar v. Sara Plasma, Inc.**, 964 F.2d 465 (5th Cir. 1992). We construe Logan's allegations as true and view them in the light most favorable to him. **Foulds v. Corley**, 833 F.2d 52, 53 (5th Cir. 1987). A dismissal by the district court is premature if the complaint, when viewed in the light most favorable to the plaintiff, states a colorable claim. **Id.**

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

[2] **Scrivner** is an unpublished opinion.

[3] **Denton v. Hernandez**, __ U.S. __, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992).

Logan's allegations are nearly identical to those made in **Scrivner**. In **Scrivner**, we held that the district court properly dismissed as frivolous a claim that a prisoner's meals were sometimes served cold. The Constitution only requires that prisoners be served food that provides adequate nutrition. **Green v. Ferrell**, 801 F.2d 765, 770 (5th Cir. 1986). Therefore, Appellant's claim that his food is sometimes served cold, is not a violation of his constitutional rights, and as such does not state a cognizable claim under 28 U.S.C. 1983.[4] Likewise, Logan's complaint that he is hindered by being physically restrained when he is in the law library does not allege a viable claim of denial of access to the courts. **See Mann v. Smith,** 796 F.2d 79, 84 (5th Cir. 1986); **Tubwell v. Griffith**, 742 F.2d 250, 252 (5th Cir. 1984). Only if Logan could show that the physical restraints effectively blocked meaningful access to the courts, would a problem of constitutional dimensions be presented. **Tubwell,** 742 F.2d at 252. Logan cannot show this for several reasons. First of all, Logan has perfected his appeal to this court, therefore, he as not been denied access to the courts. **Mann**, 796 F.2d at 84. Secondly, Logan admits he was able to go to the library, and even though he was physically restrained to a chair, other inmates helped him get the books off the shelves. Therefore, Logan had access to the books. **See Tubwell**, 742 F.2d at 252. Further, Logan was not denied

[4] There are two essential elements of a § 1983 claim: (1) the conduct in question must be committed by a person acting under color of state law; and (2) the conduct must deprive the plaintiff of a right secured by the Constitution or the laws of the United States. **Martin v. Thomas**, 973 F.2d 449, 452 (5th Cir. 1992).

access to the courts simply because he had to wait in line to get the books. He is in the court system now and has suffered no prejudice.

Finally, Logan's additional claims regarding visitation privileges, restricted exercise and socializing, restrictions on personal items, unnecessary restraints, and inadequate access to toiletry items have not been developed adequately to permit the conclusion that they are frivolous. Although a security justification for the challenged restrictions might well exist, that need cannot be presumed. Other circuits have found that claims similar to Logan's were not frivolous. **See Divers v. Department of Corrections**, 921 F.2d 191 (8th Cir. 1990); **Williams v. Lane**, 646 F. Supp. 1379 (N.D. Ill. 1986), **aff'd**, 851 F.2d 867 (7th Cir. 1988), **cert. denied**, 488 U.S. 1047 (1989); **Nadeau v. Helgemoe**, 561 F.2d 411 (1st Cir. 1977). In light of these cases, there is at least an arguable basis for the claims, precluding their dismissal as frivolous. Accordingly, further development of these claims is necessary.

In addition, upon remand, we recommend consolidation of Logan's remaining causes of action with Scrivner's case as they raise identical issues. **See Scrivner**, **supra**.

Conclusion

We **AFFIRM** the dismissal of the plaintiff's claims regarding food and ability to use the library, but **VACATE** the dismissal of their remaining claims, and **REMAND** for further proceedings consistent with this opinion.