

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-1827
Summary Calendar

RICHARD T. CARVALHO,

Plaintiff-Appellant,

VERSUS

ANDY COLLINS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(5:93-CV-197-C)

(December 16, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Richard T. Carvalho, a prisoner in the custody of the Texas Department of Criminal Justice ("TDCJ"), appeals the dismissal of his § 1983 suit against prison officials. The district court concluded that the complaint was frivolous and dismissed it pursuant to 42 U.S.C. § 1915.

We have reviewed the record and conclude that the district court did not abuse its discretion in dismissing this action as frivolous.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Carvalho presents two principal claims. First, he asserts that he was denied a job assignment to the boiler room because of his race. Carvalho's pleadings, however, fail to raise an inference of intentional discrimination based on race. Conversely, his pleadings raise the inference that he was denied his desired job assignment because he complained that the existing work schedule conflicted with his craft shop schedule. Because the facts Carvalho alleged do not give rise to an inference of racial discrimination, the district court correctly dismissed this claim.

Carvalho also contends that TDCJ officials retaliated against him by filing disciplinary actions against him, finding him guilty of prison rule infractions and taking away his craft card which provided him access to the craft shop.

Even if Carvalho's contention can be interpreted as a claim that he was retaliated against for using the formal grievance system, that contention is conclusional. Carvalho does not allege that he filed any formal grievances about the events in question, and the grievances he included in the record are irrelevant to those events.

However, "a guard . . . may not harass an inmate in retaliation for the inmate complaining to supervisors about the guard's conduct." **Gibbs v. King**, 779 F.2d 1040, 1046 (5th Cir.), **cert. denied**, 476 U.S. 1117 (1986). But Carvalho does not allege that the prison official filed charges against him in response to the craft shop incident about which he complains on appeal. Nor do the facts Carvalho alleges give rise to an inference of retaliation

regarding the prison rule violations. Also, Carvalho does not allege that he complained to prison officials about the disciplinary actions involving his unauthorized presence in the maintenance office, his refusal to work and his disruption of operations. The facts asserted in the pleadings raise an inference that those cases were filed in response to perceived or actual violations and not as retaliation. In short, Carvalho's detailed pleadings do not allege facts that give rise to an inference of retaliation.

Finally, to the extent Carvalho may wish to link the disciplinary cases to the denial of his desired boiler room assignment, he has alleged no facts that logically make such a link. Thus, even though the district court did not address the retaliation issue, we need not remand his retaliation claim for further proceedings because Carvalho has failed to allege facts giving rise to an inference of retaliation.

Carvalho further contends that the TDCJ's grievance procedures are flawed, that defendant Brian Belanger has failed to act as an impartial investigator, and that he has experienced misfortune at the hands of TDCJ officials since he filed his complaint. Carvalho did not raise those contentions below. This court will not consider § 1983 issues raised for the first time on appeal. **Beck v. Lynaugh**, 842 F.2d 759, 762 (5th Cir. 1988).

Finally, Carvalho contends that the district court erred by denying his post-judgment motion for appointment of counsel. As Carvalho's case does not present "exceptional circumstances," the

district court's denial of counsel does not constitute an abuse of discretion. **See Cupit v. Jones**, 835 F.2d 82, 86 (5th Cir. 1987); **Ulmer v. Chancellor**, 691 F.2d 209, 213 (5th Cir. 1982).

For the above reasons, we affirm the order of the district court dismissing this action.

AFFIRMED.