

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5195
Conference Calendar

CURTIS SHABAZZ,

Plaintiff-Appellant,

versus

R. FOBBS, CO II, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:93cv29
- - - - -
October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Curtis Shabazz filed a pro se, in forma pauperis (IFP) civil rights complaint alleging that he was denied his First Amendment right to practice his religion because prison officials confiscated a bag of commissary goods as he was attempting to pass them to another inmate in accordance with the Muslim practice of Zakat and because he was required to shave his beard. He also alleged that the seized property was destroyed without his knowledge in violation of the Due Process clause. The

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court dismissed Shabazz's complaint as frivolous. A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's § 1915(d) dismissal for an abuse of discretion. Id.

A prison regulation that impinges on an inmate's constitutional rights is valid if it is reasonably related to legitimate penological interests. Turner v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987). To determine whether a regulation is valid the Court considers:

(1) whether the regulation has a logical connection to the legitimate government interest invoked to justify it, (2) whether there are alternative means of exercising the rights that remain open to the inmates, (3) the impact that accommodation of the asserted constitutional rights will have on other inmates, guards and prison resources, and (4) the presence or absence of ready alternatives that fully accommodate the prisoner's rights at de minimis costs to valid penological interests.

Kahey v. Jones, 836 F.2d 948, 950 (5th Cir. 1988) (citations omitted). The Court is not required to consider all four factors to determine whether a regulation is rationally related to legitimate penological interests. Scott v. Mississippi Dep't of Corrections, 961 F.2d 77, 80 (5th Cir. 1992). This Court has held that the TDCJ-ID grooming policy is constitutional. See Powell v. Estelle, 959 F.2d 22, 25 (5th Cir.), cert. denied, 113 S.Ct. 668 (1992). Similarly, the TDCJ-ID regulation that prohibits inmates from giving property to another inmate is also rationally related to the legitimate concern for security.

Shabazz also alleges that he was denied due process because the prison officials destroyed the commissary goods without giving him notice or an opportunity to send them home. TDCJ-ID regulations prohibit an inmate from giving another inmate commissary goods and the seized goods were contraband within the meaning of the regulations. See Texas Department of Criminal Justice Institutional Division Inmate Orientation Handbook, III, J.6, K.2(a), (g). The regulations also require that contraband be confiscated and disposed of in accordance with TDCJ-ID procedures. See Texas Department of Criminal Justice Institutional Division Inmate Orientation Handbook, III, K.3. Shabazz does not allege that the goods were not disposed of in accordance with the TDCJ-ID rules, and therefore the goods were not destroyed in violation of the his due process rights. See Sullivan v. Ford, 609 F.2d 197, 198 (5th Cir.), cert. denied, 446 U.S. 969 (1980) (money seized from inmate in accordance with statute and prison regulations did not violate due process).

AFFIRMED.