UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20190
Summary Calendar

LAWRENCE GARCIA,

Plaintiff-Appellant,

VERSUS

C. HOUSTON, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H-93-4042)

(October 24, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

This civil rights action by Lawrence Garcia arises out of his incarceration at the Wynne Unit of the Texas Department of Criminal Justice, Institutional Division. Pursuant to 28 U.S.C. §1915(d), the district court dismissed Garcia's complaint. Because the court did not abuse its discretion in so doing, we **AFFIRM**.

I.

While incarcerated at the Wynne Unit, Garcia was charged with threatening to inflict harm on an officer. He received notice of

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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 Pursuant to that Rule, the court has determined that this opinion should not be published.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 charge and attended a disciplinary hearing shortly thereafter. At the hearing, the presiding officer found Garcia guilty of the charge and sentenced him to a reduction in his prisoner classification. According to Garcia, he was also placed in punitive segregation. (The record does not contain a copy of Garcia's "disciplinary report and hearing record" which would indicate the actual punishment he received.) Subsequently, Garcia filed a grievance which was denied at all levels of the process. As a result, proceeding *pro se* and *in forma pauperis*, Garcia filed a civil rights complaint under 42 U.S.C. § 1983, claiming that he was subjected to an unfair disciplinary hearing.

Pursuant to § 1915(d), the district court dismissed the complaint prior to service of process.

II.

Garcia raises three issues: the district court failed to consider his claim that he was denied due process at the disciplinary hearing by not being able to call witnesses; the district court should have allowed service of process prior to dismissing the complaint; and, he should have been permitted to amend his complaint.

Of course, when a litigant proceeds as a pauper under § 1915, the district court may scrutinize the basis of the complaint and, if appropriate, dismiss the action prior to service of process. ***Green v. McKaskle***, 788 F.2d 1116, 1119 (5th Cir. 1986). We review such dismissals only for an abuse of discretion. *E.g.,* ***Denton v.***

Hernandez, ___ U.S. ___, ___, 112 S. Ct. 1728, 1734 (1992); ***Graves v. Hampton***, 1 F.3d 315, 317 (5th Cir. 1993).

Dismissal under § 1915(d) is appropriate if the claims lack an arguable basis in either law or fact. ***Denton***, ___ U.S. at ___, 112 S. Ct. at 1733; ***Eason v. Thaler***, 14 F.3d 8, 9 (5th Cir. 1994). In reviewing state prison proceedings, the role of the federal courts is narrow. "The Supreme Court has articulated for the federal courts a policy of minimum intrusion into the affairs of state prison administration; state prison officials enjoy wide discretion in the operation of state penal institutions." ***Williams v. Edwards***, 547 F.2d 1206, 1211-12 (5th Cir. 1977). In reviewing prison administrative actions in § 1983 claims, a court will uphold the administrative decision unless it was arbitrary or capricious. ***Smith v. Rabalais***, 659 F.2d 539, 545 (5th Cir. 1981), *cert. denied*, 455 U.S. 992 (1982).

A.

The right to call witnesses for a prison disciplinary hearing is a "limited right." ***Thomas v. Estelle***, 603 F.2d 488, 490 (5th Cir. 1979). In discussing the requirements of due process in the context of such hearings, the Supreme Court has stated that "the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." ***Wolff v. MacDonnell***, 418 U.S., 539, 566 (1974). The Court recognized, however, that

> [o]rdinarily, the right to present evidence is basic to a fair hearing; but the unrestricted right

> to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution.

Id. In recognizing the narrow scope of review that courts should exercise over the judgment of prison administrators, "the Supreme Court specifically did not require that disciplinary committees state their reasons for refusing to call a witness." ***Thomas***, 603 F.2d at 490.

Garcia requested that the officer involved in the incident, as well as an inmate who witnessed it, be called to testify. But, just prior to the hearing, Garcia informed his inmate disciplinary counselor that he wanted to call additional, inmate witnesses. According to the transcript incorporated in Garcia's complaint, however, when the counselor told the presiding officer that Garcia had requested only two witnesses, Garcia did not object. In any event, he has never identified the additional witnesses and what the substance of their testimony would have been at the hearing. Additionally, he fails to allege that the disciplinary committee knew of these witnesses. "Absent specific allegations that the refusal of a disciplinary committee to call witnesses on behalf of the inmate was arbitrary, capricious or an abuse of discretion, the courts are without authority to entertain the issue." ***Id.*** Because Garcia fails to allege that the disciplinary committee's action violated this standard, the district court did not abuse its discretion in dismissing the complaint.

B.

Garcia's contends that the district court erred by dismissing the action *sua sponte*, without service of process and without allowing him to amend his complaint are without merit.

1.

An *in forma pauperis* complaint may be dismissed prior to service of process when it lacks an arguable basis in law or in fact. *See* ***Green***, 788 F.2d at 1119. Such dismissals are made early in the proceedings before burdening a defendant with the necessity of responding to the complaint.

2.

Garcia also asserts that the district court "did not take the time to inform [him] that there was a deficiency in the pleading ... which needed to be corrected by amending the complaint."

The principal mechanisms for remedying inadequate prisoner pleadings are the ***Spears*** hearing and a questionnaire to "bring into focus the factual and legal bases of prisoners' claims." ***Spears v. McCotter***, 766 F.2d 179, 181 (5th Cir. 1985). Garcia filed his complaint utilizing a ***Watson*** questionnaire, ***Watson v. Ault***, 525 F.2d 886 (5th Cir. 1976); but, the district court did not conduct a ***Spears*** hearing. We must determine whether Garcia's allegations in the questionnaire, if developed by a ***Spears*** dialog, might have presented a nonfrivolous § 1983 claim. ***Eason***, 14 F.3d at 9. We recognize, however, that

> ***Spears*** should not be interpreted to mean that all or even most prisoner claims require or deserve a ***Spears*** hearing. A district court should be able to dismiss as frivolous a significant number of

> prisoner suits on the complaint alone or the complaint together with the ***Watson*** questionnaire.

Green, 788 F.2d at 1120.

Garcia's only other allegation of a due process violation is that the presiding officer did not explain his finding of guilt when there was a conflict in the testimony of two correctional officers. Recognizing the limited role courts play in reviewing prison administrative decisions, we must consider simply whether the disciplinary hearing decision is supported by "some facts" or "whether any evidence at all" supports the action taken by the prison officials. ***Smith***, 659 F.2d at 545 (quoting ***Willis v. Ciccone***, 506 F.2d 1011, 1018, 1-19 n.11 (8th Cir. 1974)).

In his original complaint, Garcia filed what appears to be a transcript of the hearing which he prepared. In announcing his decision, the presiding officer stated that he based his decision on the report and testimony of one of the correctional officers. Obviously, sufficient evidence exists to support the decision. The presiding officer does not need to justify every credibility determination between conflicting testimony. Thus, it appears that Garcia would not be able to amend his complaint so as to allege any nonfrivolous claim. Furthermore, the district court's dismissal was without prejudice; Garcia is not prejudiced, even though the district court did not inform him of the deficiencies in his pleadings and the complaint was dismissed prior to service of process. *See* ***Graves***, 1 F.3d at 318.

III.

For the foregoing reasons, the judgment is

AFFIRMED.