

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60484
Conference Calendar

PATRICK E. JONES,

Plaintiff-Appellant,

versus

ARTHUR Y. ANDERSON, Major, and
UPENDRA KATRAGADDA,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA G-94-308
- - - - -

(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Patrick E. Jones, an inmate of the Texas Department of Criminal Justice, Institutional Division, has appealed the dismissal of his civil rights action against two prison officials, Major Arthur Y. Anderson and Captain Upendra Katragadda. Major Anderson testified at and Captain Katragadda presided over a disciplinary hearing at which Jones was convicted of fighting other inmates without using a weapon. We affirm the judgment of the district court.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Jones states as his appellate issue, whether the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment were violated because his disciplinary proceeding was discriminatory. He now asserts, for the first time, that he was intentionally discriminated against on the basis of race when he and other black inmates were segregated prior to his disciplinary hearing.

This Court need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Accordingly, the court will not consider Jones's allegation of racial discrimination.

Jones contends that he was convicted "on insufficient evidence which could have been proven if the courts [sic] would [have] allowed appellant a chance at discovery to establish the intentional discrimination required." This assertion is illogical, since Jones alleged that the discrimination consisted of segregating him prior to his disciplinary hearing.

Assuming that Jones is contending that the evidence was insufficient because the disciplinary board convicted him on the basis of the information provided to Major Anderson by the undisclosed informant, Jones is not entitled to relief. Jones has conceded that Major Anderson testified at his hearing that his "informant would not lie," i.e., Anderson knew the informant to be reliable. In a similar situation, this Court affirmed a

judgment for the defendants in Smith v. Rabalais, 659 F.2d 539 (5th Cir. Unit A 1981), cert. denied, 455 U.S. 992 (1982). In that case Captain Rabalais, the only witness at Smith's disciplinary hearing, testified that confidential informants reported to him that Smith had been dealing in narcotics. Smith was convicted of that offense. 659 F.2d at 541, 544.

The Smith v. Rabalais Court observed that "the Court in [Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)] pointed out that to accord confrontation and cross-examination rights with regard to information furnished by 'an unknown fellow inmate' would through 'the disclosure of the identity of the accuse[r] . . . pose a high risk of reprisal within the institution.'" 659 F.2d at 544 (quoting Wolff, 418 U.S. at 568). Accordingly, this Court held, "the defendant prison officials did not abuse their discretion in refusing to require Rabalais to provide inmate Smith the specific information requested [concerning the informants]." 659 F.2d at 544.

"An in forma pauperis complaint may be dismissed as frivolous [pursuant to 28 U.S.C. § 1915(d)] if it lacks an arguable basis in law or fact." Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). This Court reviews § 1915(d) dismissals "utilizing the abuse of discretion standard." Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993). In light of Wolff v. McDonnell and Smith v. Rabalais, the district did not abuse its discretion by dismissing Jones's action on authority of § 1915(d).

JUDGEMENT AFFIRMED.