

United States Court of Appeals
for the Fifth Circuit

No. 20-40208
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
December 10, 2021
Lyle W. Cayce
Clerk

EVERETTE J. RICKERSON,

Plaintiff—Appellant,

versus

TONY RUST, *Captain at Telford Unit*; D. OWENS, *Correctional Officer at Telford Unit*; J. HUGHES, *Correctional Officer (Property) at Telford Unit*,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:17-CV-172

Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Proceeding pro se and in forma pauperis (IFP), Everette J. Rickerson, Texas prisoner # 487845, filed the instant 42 U.S.C. § 1983 suit to challenge the defendants' unauthorized search of his cell and the seizure of his legal

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-40208

papers. In addition, he contended that defendant Tony Rust made a threatening gesture at him shortly after the filing of his complaint. The district court granted summary judgment in favor of the defendants, concluding that Rickerson failed to show a violation of his constitutional rights and that the defendants were entitled to qualified immunity. The district court rejected Rickerson's assertion that he was entitled to additional discovery. Rickerson now appeals the adverse ruling.

We review de novo a district court's summary judgment ruling, "with all facts and inferences construed in the light most favorable to the nonmoving party." *McCreary v. Richardson*, 738 F.3d 651, 654 (5th Cir. 2013). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "If the moving party meets the initial burden of showing there is no genuine issue of material fact, the burden shifts to the nonmoving party to produce evidence or designate specific facts showing the existence of a genuine issue for trial." *Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc.*, 738 F.3d 703, 706 (5th Cir. 2013) (internal quotation marks and citation omitted). "The evidence, including factual allegations set forth in verified complaints, is viewed in the light most favorable to the nonmoving party, but conclusional allegations and unsubstantiated assertions may not be relied on as evidence." *Butts v. Martin*, 877 F.3d 571, 581-82 (5th Cir. 2017) (internal quotation marks, footnote, and citation omitted).

Rickerson's assertion that the defendants' seizure of his legal documents deprived him of access to the courts fails, as he has not shown that he was unable "to prepare and transmit a necessary legal document to a court." *Brewer v. Wilkinson*, 3 F.3d 816, 821 (5th Cir. 1993); see FED. R. CIV. P. 8(a)(1). As Rickerson did not have an expectation of privacy in his cell, no Fourth Amendment violation occurred. See *Marshall v. Norwood*,

No. 20-40208

741 F.2d 761, 763-64 (5th Cir. 1984). Although he complains about the defendants' failure to comply with prison rules during the search, this is insufficient to set forth a constitutional violation. *See Hernandez v. Estelle*, 788 F.2d 1154, 1158 (5th Cir. 1986). Rickerson's purported inability to file a civil rights complaint challenging a lack of medical treatment did not "deprive him of the minimal measure of life's necessities" and thus did not violate the Eighth Amendment. *Berry v. Brady*, 192 F.3d 504, 507 (5th Cir. 1999). Additionally, Rust's threatening gesture did not violate the Constitution. *See McFadden v. Lucas*, 713 F.2d 143, 146 (5th Cir. 1983).

Although Rickerson alleges that his property was seized without due process, he is not entitled to relief under the Fourteenth Amendment. *See Parratt v. Taylor*, 451 U.S. 527, 541-44 (1981), *overruled in part on other grounds, Daniels v. Williams*, 474 U.S. 327 (1986); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). Rickerson's claims of retaliation are unavailing because they are based on no more than his own conclusional assertions and because he has failed to "allege a chronology of events from which retaliation may plausibly be inferred." *Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995). Even if Rickerson has established such a chronology of events between the filing of the instant lawsuit and Rust's threatening gesture, this de minimis action does not give rise to a retaliation claim. *See Morris v. Powell*, 449 F.3d 682, 686 (5th Cir. 2006).

Because Rickerson has not shown a violation of his constitutional rights, the district court did not err in concluding that the defendants were entitled to qualified immunity. *See Melton v. Phillips*, 875 F.3d 256, 261 (5th Cir. 2017). Additionally, Rickerson has not established that the district court abused its discretion by granting the summary judgment motion despite the defendants' failure to provide him with all discovery ordered by the magistrate judge. *See Crosby v. Louisiana Health Serv. and Indem. Co.*, 647 F.3d 258, 261 (5th Cir. 2011). Contrary to his assertions, Rickerson has not

No. 20-40208

established that copies of the mail logs or the security videos would help him to establish a genuine issue of material fact. *See Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1285 (5th Cir. 1990).

Rickerson has not shown that the district court erred in granting summary judgment and denying relief on his civil rights complaint. *See McCreary*, 738 F.3d at 654 (5th Cir. 2013). Accordingly, the judgment of the district court is AFFIRMED. Rickerson's motion for appointment of counsel is DENIED.