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BPS-41

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-3067

JOHN W. RALSTON Jr.; ENRICO ENRICO;
JAMES CUNNINGHAM; MARLIN FOUSE;
ANTHONY JAMES HARTMAN; ROBERT POWELL,
Appellants

v.

MARTIN HORN; FREDERICK FRANK;
CHARLES MARTIN; LEONARD DEARMITT

On Appeal From the United States District Court
for the Middle District of Pennsylvania
(M.D. Pa. Civ. No. 98-cv-1700)
District Judge: Honorable William J. Nealon

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
November 24, 1999

Before: SLOVITER, MANSMANN and GREENBERG, Circuit Judges.

JUDGMENT

This case came on to be heard on the record from the United States District Court
for the Middle District of Pennsylvania for possible dismissal under 28 U.S.C. §

1-12-00
DOUGLAS SISK

1915(e)(2)(B). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this court that that the motion for counsel is denied and the appeal is dismissed under 28 U.S.C. § 1915(e)(2)(B). All of the above in accordance with the opinion of this Court.

ATTEST:

A handwritten signature in black ink, appearing to read "A. S. [unclear]", written over a circular stamp or mark.

Clerk

DATED: January 12, 2000

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(Filed JAN 11 2000)

OPINION

1-12-00
E. DOUGLAS STELL

PER CURIAM

Pro se appellants have appealed the District Court's dismissal of their complaint filed under 42 U.S.C. § 1983 and the District Court's denial of their motion for reconsideration.¹ Appellants have also requested that counsel be appointed. For the reasons set forth below, we will deny the request for appointment of counsel and dismiss the appeal pursuant to 28 U.S.C. § 1915(e)(2)(B).

Pursuant to 28 U.S.C. § 1915(e)(1), this Court may appoint counsel for indigent civil litigants. In deciding whether to make an appointment the Court must determine, as a threshold matter, if the claim has arguable merit in fact and law. Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993). If this threshold is met, the Court should consider a number of additional factors, including: the appellant's ability to present the case; appellant's education, literacy, prior work experience, and prior litigation experience; appellant's ability to understand English; any restraints placed upon the appellant by confinement; and the difficulty of the legal issues involved. Id. at 156. Because we find that appellants'

¹The District Court dismissed the action as legally frivolous under 28 U.S.C. § 1915A, despite the fact that Mr. Ralston paid the filing fees. The Court of Appeals for the Seventh Circuit has recently joined the Second, Fifth, Sixth, and Tenth Circuits in upholding the dismissal of a case under 28 U.S.C. § 1915A in which the petitioner paid the filing fee. See Rowe v. Shake, --- F.3d ----, 1999 WL 1011930 (7th Cir. Nov. 8, 1999). Accord Carr v. Dvorin, 171 F.3d 115, 116 (2d Cir. 1999); Martin v. Scott, 156 F.3d 578, 579-80 (5th Cir. 1998), cert. denied, --- U.S. ---- (1999); Ricks v. Mackey, 141 F.3d 1185 (10th Cir. 1998) (unpublished decision); McGore v. Wrigglesworth, 114 F.3d 601, 608 (6th Cir. 1997).

claims lack merit, we need not address the other factors.

In their § 1983 complaint, appellants claim that the defendant prison officials have prevented them from sending money to non-family members; from buying mutual funds, stocks, bonds, and annuities; and from receiving mail and making phone calls with outside entities regarding their personal financial transactions and income tax filings. In addition, they claim that the defendants have retaliated against them for complaining about these alleged constitutional deprivations.

As the District Court correctly noted, appellants have not alleged facts sufficient to set forth a claim under 42 U.S.C. § 1983. Prison inmates have a property interest in the money deposited in their prison accounts, and under certain circumstances, in interest earned on those deposits.² However, they do not have a protected interest in being able to use the money contained in their prison accounts to enter into financial arrangements with entities outside of the prison. Furthermore, if they did have such a protectible interest, restrictions placed on their dealings would be constitutional so long as they were rationally related to penological purposes.³

The District Court correctly noted that there has been no demonstrated due process

²Cf. Mitchell v. Kirk, 20 F.3d 936 (8th Cir. 1994) and Tellis v. S. Godinez, 5 F.3d 1314 (9th Cir. 1992).

³Turner v. Safley, 482 U.S. 78, 89 (1987); see also Mitchell, 20 F.3d at 938 (assuming prison inmates have a right to earn interest on money contained in their prison bank accounts, regulations prohibiting individual interest-bearing accounts are related to valid penological purposes and do not violate the right.)

violation, as appellants have not alleged that there has been an unauthorized removal of funds from their prison accounts. Furthermore, appellants have not alleged facts that demonstrate that the defendants have violated any constitutional provision. Finally, appellants have failed to set forth a claim for retaliation. To establish a prima facie case of retaliation, appellants must show that (1) they were engaged in protected activity; (2) they were subject to an adverse action subsequent to or contemporaneously with such activity; and (3) there is a causal link between the protected activity and the adverse action. Hankins v. City of Philadelphia, 189 F.3d 353, 370 (3d Cir. Aug. 18, 1999) (citing Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997)). Appellants have not made this showing. Furthermore, as the District Court correctly noted, evidence in the record demonstrates that the actions complained of were taken pursuant to valid penological purposes. Accordingly, because their claims lack merit, we will deny appellants' request for appointment of counsel under Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993).

Under § 1915 (e)(2)(B), a court must dismiss a case "at any time" if it determines an action or appeal (i) is frivolous or malicious, (ii) fails to state a claim upon which relief may be granted, or (iii) seeks monetary damages from a defendant with immunity. A legally frivolous action is one "based on an indisputably meritless legal theory." Neitzke v. Williams, 490 U.S. 319, 327 (1989). As we explained above, appellants' claims lack merit. Appellants have not alleged, and it does not appear from the record, that there is

any set of facts that that would support a grant of relief. Accordingly, because this action is based on an indisputably meritless legal theory, we will dismiss it under 28 U.S.C. § 1915(e)(2)(B).

TO THE CLERK:

Please file the foregoing opinion.