IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
August 24, 2018
Lyle W. Cayce
Clerk

No. 17-20641
Summary Calendar

IBUKUN OLOWA WASHINGTON,

Plaintiff-Appellant

v.

BRIAN COLLIER; LORIE DAVIS; JANE DOES,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-2129

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:*

Ibukun Olowa Washington, Texas prisoner # 1941101, sued the defendants under 42 U.S.C. § 1983 for appropriating the $32.78 in his inmate trust fund account without due process. The district court dismissed the complaint as frivolous and issued a strike under 28 U.S.C § 1915(g). Washington appeals that judgment and also moves for the appointment of appellate counsel.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The Fourteenth Amendment protects inmates from being deprived of their property without due process of law. *Parratt v. Taylor*, 451 U.S. 527, 536-37 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 106 (1986). "We assume *arguendo* that inmates have a protected property interest in the funds in their prison trust fund accounts, entitling them to due process with respect to any deprivation of these funds." *Morris v. Livingston*, 739 F.3d 740, 750 (5th Cir. 2014). However, a state actor's unauthorized deprivation of an inmate's prison account funds—be it negligent or intentional—"does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available." *Hudson v. Palmer*, 468 U.S. 517, 533 (1984).

We have long acknowledged that Texas provides inmates in Washington's position with meaningful postdeprivation remedies, either through statute or through the tort of conversion. *See Myers v. Klevenhagen*, 97 F.3d 91, 95 (5th Cir. 1996); *Murphy v. Collins*, 26 F.3d 541, 543-44 (5th Cir. 1994); *accord Aguilar v. Chastain*, 923 S.W.2d 740, 744 (Tex. App. 1996). Although Washington contends that *Parratt* and *Hudson* do not preclude his pursuit of § 1983 relief in this case because the taking of his funds was "effected pursuant to an established state policy or procedure" for which the state "could provide predeprivation process," *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 n.14 (1985), he has identified no such established policy or procedure at work here.

Because Texas affords Washington an adequate postdeprivation remedy for the confiscation of the $32.78 in his inmate trust account, no actionable violation of his rights occurred, and his § 1983 claim thus "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see Hudson*, 468 U.S. at 531-33. As a result, the district court's dismissal of

Washington's complaint under § 1915 was not an abuse of its discretion. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992). We dismiss the appeal as frivolous. *See* 5TH CIR. R. 42.2. We also deny the motion to appoint appellate counsel.

The dismissal of Washington's § 1983 complaint as frivolous and the dismissal of this appeal on the same ground each count as a strike under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 385-87 (5th Cir. 1996). Washington has also received a strike as a result of this court's dismissal as frivolous of his appeal in *Washington v. Mackey*, No. 18-10039. Accordingly, Washington is BARRED from proceeding in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is "under imminent danger of serious physical injury." § 1915(g).

APPEAL DISMISSED; MOTION TO APPOINT COUNSEL DENIED; SANCTION IMPOSED.

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Appeal from the United States District Court for the
Southern District of Texas

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the appeal is dismissed as frivolous.

IT IS FURTHER ORDERED that Washington is barred from proceeding in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is "under imminent danger of serious physical injury." § 1915(g).

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Appeal from the United States District Court
for the Southern District of Texas

ON PETITION FOR REHEARING

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT: 9-24-2018

UNITED STATES CIRCUIT JUDGE