STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0880

Christopher M. Haney,
petitioner,
Appellant,

vs.

Lynn Dingle,
Warden,
Respondent.

Filed May 13, 2008
Affirmed
Crippen, Judge[*]

Washington County District Court
File No. C0-07-3679

Christopher M. Haney, OID #151053, MCF-Stillwater, 970 Pickett Street North, Bayport, MN 55003 (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101 (for respondent)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Crippen, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CRIPPEN, Judge

Appellant Christopher Haney challenges the district court's denial of his motion to proceed in forma pauperis and its dismissal of his claims with prejudice. Because the district court did not abuse its discretion, we affirm.

FACTS

While incarcerated at Stillwater prison, appellant attempted to mail a letter addressed to an inmate at the Oak Park Heights prison. The Stillwater prison mailroom staff refused to process the letter because it contained a transfer of property. Appellant subsequently attempted to mail another letter to the inmate that included derogatory language directed at mailroom staff on the outside of the envelope and in the contents of the letter.

Based on appellant's letter, the department of corrections charged appellant with abuse and harassment of staff and disorderly conduct. After an administrative hearing, the hearing officer found appellant guilty of both charges and imposed 45 days of segregation and 15 days of extended incarceration. The warden affirmed the decision and agreed that the remarks included with the letter were "inciting and harassing" and jeopardized "the safety and the security of the facility."

Shortly thereafter, appellant brought a motion to proceed in forma pauperis and a habeas corpus petition challenging the imposition of discipline, contending that the penalty violated his First Amendment rights. The district court summarily denied the motion as frivolous.

D E C I S I O N

If certain prerequisites are met, an inmate may be allowed to commence a civil action, such as a habeas corpus petition, by proceeding in forma pauperis. Minn. Stat. § 563.02, subd. 2 (2006). But in forma pauperis motions that are "frivolous or malicious" must be dismissed with prejudice. *Id.*, subd. 3(a) (2006). To determine whether an action is frivolous or malicious, courts must consider whether the claim lacks an arguable basis in law or fact, or is substantially similar to any previous claims brought by the party that have been adjudicated on the merits. *Id.*, subd. 3(b)(1)-(2) (2006). Appellant's motion was denied because the habeas corpus petition had no arguable basis in law or fact. The district court has broad discretion in considering in forma pauperis proceedings and will not be reversed absent an abuse of discretion. *Maddox v. Dep't of Human Servs.*, 400 N.W.2d 136, 139 (Minn. App. 1987).

Appellant's habeas corpus petition challenges the prison regulations prohibiting harassment of staff and disorderly conduct on the grounds that they violate his right to free speech.[1] "[C]onvicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison." *Bell v. Wolfish*, 441 U.S. 520, 545, 99 S. Ct. 1861, 1877 (1979). "[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate

[1] Appellant also contends that the punishment he received unlawfully deprived him of his liberty interest, violating his right to due process. But because appellant failed to explain or support this argument, we decline to address it. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (stating that a party who inadequately briefs an argument waives that argument).

penological objectives of the corrections system." *Pell v. Procunier*, 417 U.S. 817, 822, 94 S. Ct. 2800, 2804 (1974).

But at the same time, the commissioner of corrections has broad statutory authority to regulate prison conditions and adopt regulations to prohibit prisoner conduct that would be harmful to staff or other prisoners. Minn. Stat. § 241.01, subd. 3a(b) (2006). When reviewing prison regulations, courts "must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them." *Overton v. Bazzetta*, 539 U.S. 126, 132, 123 S. Ct. 2162, 2167 (2003).

Appellant claims that the prison regulations should be evaluated under the test enunciated in *Procunier v. Martinez*, 416 U.S. 396, 413, 94 S. Ct. 1800, 1811 (1974). But *Martinez* has been overruled in part. *Thornburgh v. Abbott*, 490 U.S. 401, 413-14, 109 S. Ct. 1874, 1881-82 (1989) (limiting the analysis of *Martinez* to outgoing correspondence). Here, appellant admitted that the letter in question was not sent as outgoing correspondence but was instead directed at mailroom staff within the prison as a vehicle of protest for their unwillingness to deliver his previous letter containing contraband. This is evident from the content of the letter and the statements on the envelope. Furthermore, the purported recipient of appellant's letter was another inmate. *Martinez* is inapplicable in this context.

Instead, the circumstances here require application of the more deferential *Turner* test to evaluate the constitutionality of these regulations. *See O'Lone v. Estate of*

Shabazz, 482 U.S. 342, 349, 107 S. Ct. 2400, 2404 (1987). Under that test, a regulation "is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261 (1987). Four factors are relevant to such a determination. *Id.* at 89-91, 107 S. Ct. at 2262. First, the regulation must have a "valid, rational connection" to the "legitimate governmental interest put forth to justify it." *Id.* at 89, 107 S. Ct. at 2262 (quotation omitted). The second consideration is whether alternative means remain open to prison inmates to exercise the right at issue. *Id.* at 90, 107 S. Ct. at 2262. The third factor considers "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally." *Id.* Finally, the court must consider whether there are "ready alternatives" to the regulation. *Id.*

Our examination of these factors shows that the department policies prohibiting harassment of staff and disorderly conduct are constitutionally permissible. Although appellant argues that these regulations do not serve a valid penological interest, the department has a strong interest in maintaining control and discipline in the prison setting, as well as protecting the safety and security of its institutions and the employees who staff them. *See Pell*, 417 U.S. at 823, 94 S. Ct. at 2804 (noting that maintaining prison security is "central to all other corrections goals"). As other jurisdictions have recognized, hostile or intimidating communications threaten this interest and may be regulated without abrogating an inmate's First Amendment rights. *See, e.g., Jones v. Nelson*, 861 F. Supp. 983, 985-86 (D. Kan. 1994) (inmate does not have the right to call a corrections officer a "b-tch" and could be disciplined under a prison regulation requiring

inmates to respect prison officials); *Bradley v. Hall*, 911 F. Supp. 446, 447-50 (D. Or. 1994) (prison regulation barring "hostile, sexual, abusive or threatening language" does not violate a prisoner's First Amendment rights); *Carter v. State*, 537 N.W.2d 715, 717 (Iowa 1995) (holding that prison regulation barring verbal abuse is constitutionally permissible under the *Turner* test); *Alward v. Golder*, 148 P.3d 424, 428 (Col. Ct. App. 2006) (upholding prison regulation that prohibited verbal abuse toward prison staff).

Because there is no merit to appellant's arguments, the district court's finding that the appeal is frivolous is not an abuse of discretion.

Affirmed.