FILED
United States Court of Appeals
Tenth Circuit

September 18, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BRYCE FRANKLIN,

Plaintiff - Appellant,

v.

AMANDA ANAYA; KARL DOUGLAS; THE GEO GROUP,

Defendants - Appellees.

No. 23-2026
(D.C. No. 1:19-CV-00899-KWR-SMV)
(D. N.M.)

ORDER AND JUDGMENT*

Before **MATHESON**, **BRISCOE**, and **EID**, Circuit Judges.

Bryce Franklin, a New Mexico state prisoner appearing pro se, filed this action against The Geo Group, a private entity that operates a correctional facility in New Mexico, and two employees at that correctional facility, alleging claims under 42 U.S.C. § 1983 and New Mexico state tort law. The district court dismissed the action pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

could be granted. Franklin now appeals from that decision. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm in part, reverse in part, and remand the matter to the district court for further proceedings consistent with this order.

I

Like the district court, we assume without deciding that the following facts, all taken from Franklin's pleadings in this case, are true. In August 2015, Franklin began serving a life sentence in the custody of the New Mexico Department of Corrections (NMDC). In early 2017, Franklin was "incarcerated at the North[e]ast[] New Mexico Detention [F]acility" (NNMD), a facility that was operated by a private corporation called The Geo Group. ROA, Vol. 1 at 118. "On January 31, 2017," Franklin "was rehoused in restrictive housing" at NNMD. *Id*. at 121. The following day, "he recieved [sic] an inmate misconduct report alleging" that Karl Douglas, a lieutenant of security at NNMD, "and two other prison officials had found 'escape paraphernalia' during a cell shakedown." *Id*. On February 28, 2017, "Franklin was convicted of possession of escape paraphernalia which triggered a mandatory refferral [sic] to" what is known as the "predatory behavior management program" (PBMP), which is "a [b]ehavioral based program for inmates requiring enhanced supervision." *Id*. at 120, 121. "On March 1st, 2017, Franklin was placed on involuntary status pending transfer to the PBMP." *Id*. at 121. On April 4, 2017, Amanda Anaya, a caseworker at NNMD, notified Franklin "he would be attending" a meeting of the PBMP referral committee "on April 8th, 2017." *Id*. 13. On April 8, 2017, Franklin "attended a 2 person refferal [sic] committee [meeting] with Douglas

and Anaya." *Id*. "Douglas stated" during the meeting that it "wasn't a place for Franklin to present evidence but merely to inform him why he was being referred" to the PBMP. *Id*. at 123.

On June 14, 2017, Franklin was transferred from NNMD to the PBMP. "Franklin remained at the PBMP until[] February 2019." *Id*. at 124.

The PBMP was allegedly "designed in (4) steps" and "[a]s each prisoner progresses thru [sic] the steps they" are supposed to "receive behavioral programming." *Id*. at 11. "No prisoners," however, "were recieving [sic] any programming, behavioral or otherwise for the duration Franklin was" confined in the PBMP. *Id*. Instead, prisoners were allegedly "locked in [their] cell[s] 24 hours a day," with "zero contact with other prisoners," showers provided "(3) times a week" and "out of cell exercise" provided "2-3 times a week." *Id*. Further, "[t]he step regression feature of the program allow[ed] any staff member to lower a prisoner['s] 'step' creating the possibility of indefinite placement." *Id*.

II

On July 30, 2019, Franklin filed a pro se complaint in the District Court of Santa Fe County, New Mexico. The complaint named as defendants Anaya, Douglas, The Geo Group, and the NMDC. The complaint generally alleged that Franklin was "seek[ing] declaratory judgement [sic] and damages" "stem[ming] from two years he was housed in solitary confinement" as part of the PBMP. ROA, Vol. 1 at 8. According to the complaint, Franklin "was refferred [sic] and placed in" the PBMP "without any of the procedural safeguards required by law." *Id*. Count 1 of the

complaint alleged violations of the United States Constitution arising out of defendants' refusal "to provide an impartial refferal [sic] committee," defendants' denial of "any opportunity" for Franklin "to defend himself and present exculpatory evidence," and defendants' decision to subject Franklin "to unlawful, excessive and unjustified confinement." *Id*. at 14. Count 2 of the complaint alleged violations of the New Mexico Constitution. Count 3 of the complaint alleged a claim against all defendants for negligence. Count 4 alleged a claim of false imprisonment against all defendants. Count 5 alleged a claim against all defendants for malicious abuse of process.

On September 26, 2019, The Geo Group removed the case to the United States District Court for the District of New Mexico and filed an answer to Franklin's complaint.

On July 21, 2022, the district court issued a memorandum opinion and order dismissing Franklin's complaint without prejudice for failure to state a claim. The district court concluded that Franklin's claims under 42 U.S.C. § 1983 were not viable for a number of reasons, including that (a) the NMDC was not a "person" for purposes of § 1983, (b) the complaint failed to allege sufficient facts to support a claim against The Geo Group, (c) the complaint failed to allege how Anaya and Douglas violated Franklin's constitutional rights, (d) the Eighth Amendment claims alleged in the complaint were factually insufficient, and (e) under *Heck v. Humphrey*, 512 U.S. 477 (1994), the validity of the prison disciplinary proceedings that led to Franklin's placement in the PBMP could not be challenged in a § 1983 action until

Franklin had first succeeded in challenging those disciplinary proceedings in a state or federal habeas action. As for the tort claims alleged in the complaint, the district court concluded that they were not actionable under the New Mexico Tort Claims Act (NMTCA). Notably, the district court gave Franklin an opportunity to cure the defects in his complaint by filing an amended complaint within thirty days.

On August 18, 2022, Franklin filed a motion for extension of time to file an amended complaint. The magistrate judge granted Franklin's motion and extended the deadline for filing the amended complaint to October 6, 2022.

On October 14, 2022, the district court issued an order dismissing the action with prejudice. The district court also entered final judgment in the case that same day.

On October 24, 2022, the clerk of the district court docketed an amended complaint, as well as a memorandum in support of the amended complaint, that it received from Franklin. The amended complaint dropped NMDC as a named defendant. Count 1 of the amended complaint alleged that defendants violated Franklin's procedural due process rights under the Fourteenth Amendment to the United States Constitution. Count 2 of the amended complaint alleged that "[d]efendants [sic] decision to refer and place [him] in the PBMP . . . constitute[d] cruel and unusual punishment." *Id*. at 125. Count 3 alleged a claim for negligence against all of the defendants. Count 4 alleged a claim of false imprisonment against all of the defendants. Count 5 alleged a claim of malicious abuse of process against all of the defendants. The amended complaint included a certificate of service, in

which Franklin declared under penalty of perjury that he placed a copy of the amended complaint "in the institution mailbox with appropriate postage on October 1st, 2022" and addressed to the district court. *Id*. at 130.

On November 3, 2022, Franklin filed a motion asking the district court to reconsider its October 14, 2022 order of dismissal. Franklin argued in his motion that "[b]ased on the prison mailbox rule," his "amended complaint was timely mailed," and thus he should be allowed "to continue with this lawsuit." *Id*. at 174.

On February 7, 2023, the district court issued an order granting Franklin's motion to reconsider, withdrawing its order of dismissal, and reopening the case.

On February 8, 2023, the district court issued a memorandum opinion and order dismissing Franklin's amended complaint pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief could be granted. In its order, the district court first addressed Franklin's § 1983 claims and concluded that (a) the amended complaint failed to allege that any employee of The Geo Group, acting in conformity with a policy or custom of the corporation, deprived him of his constitutional rights, (b) Franklin's claims that he was deprived of due process in the prison disciplinary proceedings were barred under *Heck* and *Edwards v. Balisok*, 520 U.S. 641 (1997) until such time as Franklin successfully challenged the validity of those prison disciplinary proceedings in a state or federal habeas action, (c) Franklin's Eighth Amendment claims failed because the amended complaint did not allege "that a particular prison official was aware of, but remained deliberately indifferent to, an excessive risk to his health or safety," did not "identif[y] any

employee of the Penitentiary of New Mexico (where the PBMP is administered) as a defendant," and did not allege that Franklin's "safety was threatened or that he was deprived of adequate food, clothing, shelter, sanitation, or medical care." ROA, Vol. 1 at 189. As for Franklin's tort claims, the district court concluded that Anaya and Douglas were "protected from liability as a matter of sovereign immunity" under the NMTCA. *Id*. at 191. The district court therefore dismissed Franklin's § 1983 procedural due process claims without prejudice and dismissed the remainder of Franklin's claims with prejudice.

The district court entered final judgment on the same day, February 8, 2023. Franklin filed a timely notice of appeal from the final judgment.

III

Franklin raises four issues in his appeal. First, he contends that the district court erred in applying the *Heck* doctrine to his § 1983 procedural due process claims. Second, he argues that the district court erred in concluding that the amended complaint failed to sufficiently allege a § 1983 claim for cruel and unusual punishment. Third, he argues that the district court erred in concluding that Anaya and Douglas, who are employees of The Geo Group, are entitled to immunity from his tort claims under the NMTCA. Lastly, Franklin argues that the district court erred in concluding that The Geo Group cannot be held liable for the tort claims under a respondeat superior theory of liability. For the reasons that follow, we affirm the district court's rulings on the second and fourth issues, but reverse the district court's rulings on the first and third issues and remand for further proceedings.

A

Section 1915A of Title 28 requires a district court to "review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). A district court that screens a prisoner complaint under § 1915A must in turn "dismiss the complaint, or any portion of the complaint, if the complaint . . . fails to state a claim upon which relief may be granted." *Id*. § 1915A(b)(1).

We review de novo a district court's decision to dismiss a prisoner complaint pursuant to § 1915A(b)(1) for failure to state a claim. *Young v. Davis*, 554 F.3d 1254, 1256 (10th Cir. 2009).

B

Franklin argues in his first issue on appeal that the district court erred in dismissing his § 1983 procedural due process claim pursuant to the Supreme Court's decision in *Heck*. He argues that the district court's decision "squarely conflicts with" the Supreme Court's ruling in *Muhammad v. Close*, 540 U.S. 749 (2004). For the reasons that follow, we agree with Franklin.

Under *Heck*,

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus . . . . A claim for

> damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Heck, 512 U.S. at 486–87 (emphasis in original) (footnote omitted) (citation omitted). In *Edwards*, the Supreme Court extended *Heck* to § 1983 claims for damages and/or declaratory relief by state prisoners "challenging the validity of the procedures used to deprive [them] of good-time credits" that can affect their release date. 520 U.S. at 643.

In *Muhammad*, the Supreme Court held that "*Heck*'s requirement to resort to state litigation and federal habeas before § 1983 is not . . . implicated by a prisoner's challenge that threatens no consequence for his conviction or the duration of his sentence." 540 U.S. at 751. Thus, neither *Heck* nor *Edwards* "bar relief under § 1983 where . . . a prisoner challenges the procedures used to assess certain disciplinary sanctions (other than a loss of good-time credits) that have no effect on the duration of his confinement." *Requena v. Roberts*, 552 F. App'x 853, 856 n.4 (10th Cir. 2014) *(unpublished); see also Hicks v. LeBlanc, No. 22-30184, — F.4th —, 2023 WL 5694871 at *7 (5th Cir. Sep. 5, 2023)* (discussing *Heck*, *Edwards*, and *Muhammad*).

In the case at hand, we do not construe Franklin's § 1983 due process claims as challenging the validity of his confinement in the custody of the NMDC or the duration of that confinement. Rather, we construe his § 1983 due process claims as

challenging only the procedures employed by defendants in deciding to transfer him to a facility in which the conditions of confinement were allegedly harsher than the pre-transfer conditions of confinement.

The district court cited to our decision in *Cardoso v. Calbone*, 490 F.3d 1194 (10th Cir. 2007), in support of its decision. ROA, Vol. 1 at 188. But in *Cardoso*, the plaintiff-prisoner alleged "that defendants abridged his due-process rights when they reduced his security-classification level from four to two, which adversely affected the rate at which he could earn credits against his sentence." 490 F.3d at 1195–96. Here, in contrast, there is no allegation that Franklin's placement in the PBMP program impacted his release date in any way.

We therefore conclude that neither *Heck* nor *Edwards* applies to those claims and that the district court erred in concluding otherwise. The district court's dismissal of Franklin's § 1983 due process claims must therefore be reversed and those claims remanded to the district court for further proceedings.

C

In his second issue on appeal, Franklin challenges the district court's dismissal of his § 1983 Eighth Amendment claims "for cruel and unusual punishment." Aplt. Br. at 9. Franklin argues in support that "[t]he District Court misunderstood" the nature of his Eighth Amendment claim. *Id*. at 11. According to Franklin, his Eighth Amendment claim did not challenge "the conditions of the PBMP itself," but rather the defendants' decision to punish him by transferring him "to an atypical facility." *Id*. In other words, Franklin asserts, "[t]he decision made by Douglas and Anaya" to

transfer him to the PBMP "was cruel and unusual because [he] was innocent of the disciplinary infraction." *Id*.

"The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones, and it is . . . settled that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal quotation marks and citations omitted). To establish that a prison official violated the Eighth Amendment, a prisoner must satisfy "two requirements." *Id*. at 834. First, a prisoner must establish an Eighth Amendment "deprivation" that is "objectively, sufficiently serious." *Id*. (internal quotation marks omitted). "The second requirement follows from the principle that only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Id*. (internal quotation marks omitted). "To violate the Cruel and Unusual Punishments Clause, a prison official must have a sufficiently culpable state of mind." *Id*. (internal quotation marks omitted). "In prison-conditions cases that state of mind is one of deliberate indifference to inmate health or safety." *Id*. (internal quotation marks omitted).

We are aware of no case, and Franklin has pointed to none, that holds that the mere transfer of a prisoner from one facility to another, even if the second facility imposes generally more restrictive conditions of confinement than the first, can give rise to an Eighth Amendment claim against the prison officials involved in the prisoner's transfer. We also note that Franklin's amended complaint does not allege deliberate indifference on the part of Anaya or Douglas. We therefore conclude that

Franklin's Eighth Amendment claim, as he has described it in his appellate brief, fails to state a valid claim upon which relief could be granted.

D

Franklin argues in his third issue on appeal that the district court erred in concluding that defendants Anaya and Douglas are entitled to immunity from his tort claims under the NMTCA. For the reasons that follow, we agree with Franklin.

The New Mexico Legislature has "declared [it] to be the public policy of New Mexico that governmental entities and public employees shall only be liable within the limitations of the [NMTCA] and in accordance with the principles established in that act." N.M. Stat. Ann. § 41-4-2(A). The NMTCA grants immunity from tort liability to governmental entities and public employees "while acting within the scope of duty," except for certain specific waivers of liability specified in New Mexico statutes. N.M. Stat. Ann. § 41-4-4(A). Of relevance here, one of those specific waivers of liability is for law enforcement officers:

> The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights, the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence, failure to comply with duties established pursuant to statute or law or any other deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties. For purposes of this section, "law enforcement officer" means a public officer or employee vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of or

> convicted of committing a crime, whether that duty extends to all crimes or is limited to specific crimes.

N.M. Stat. Ann. § 41-4-12.

Notably, the New Mexico Legislature has classified "jailers" as "law enforcement officers" for purposes of the NMTCA. Under New Mexico law, a "jailer" is defined to "mean[] any employee of a local jail who has inmate custodial responsibilities, including those persons employed by private independent contractors who have been designated as jailers by the sheriff." *Id*. § 33-3-28(D)(1). A "local jail" is defined under New Mexico law as "a facility operated by a county, municipality or combination of such local governments or by a private independent contract pursuant to an agreement with a county, municipality or combination of such local governments and used for the confinement of persons charged with or convicted of violation of a law or ordinance." *Id*. § 33-3-28(D)(2). "Jailers, while acting within the scope of such law enforcement duties, shall be deemed law enforcement officers for purposes of the Tort Claims Act; provided that coverage of liability of jailers employed by private independent contractors shall be made by the independent contractor." *Id*. § 33-3-28(A).

In his amended complaint, Franklin alleged the existence of an "Agreement Between The Geo Group and Union County." ROA, Vol. 1 at 126. For purposes of this appeal, we presume that this allegation refers to the existence of an agreement between Union County, New Mexico, and The Geo Group for the operation of the NNMD. Assuming that allegation to be true for purposes of this appeal, that would

mean that defendants Anaya and Douglas, who are allegedly employed by The Geo Group at NNMD, would qualify as "law enforcement officers" under New Mexico law for purposes of the NMTCA. And that in turn would mean that Franklin's tort claims against Anaya and Douglas would fall within the waiver of immunity outlined in § 41-4-12. As noted, that waiver of immunity specifically applies to claims for malicious prosecution and abuse of process, both of which are listed as claims in Franklin's amended complaint. The only other tort claim alleged in Franklin's amended complaint is one for "negligence." Although the waiver of immunity outlined in § 41-4-12 does not mention "negligence" claims, it does include claims for "failure to comply with duties established pursuant to statute or law or any other deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties." N.M. Stat. Ann. § 41-4-12. Based upon our review of the allegations in Franklin's amended complaint, that appears to be precisely what he is alleging Anaya and Douglas failed to do. Consequently, for purposes of this appeal only, we must conclude that Franklin's negligence claim also falls within the waiver of immunity outlined in § 41-4-12.

For these reasons, we conclude that the district court erred in concluding that Franklin's tort claims against Anaya and Douglas were barred under the NMTCA. We must therefore reverse the dismissal of these claims and remand them to the district court for further proceedings.

E

Franklin frames his fourth and final issue on appeal as "[w]hether the respondeat superior principal [sic] can be applied to a private corporation under New Mexico's Tort Claims Act." Aplt. Br. at 2. This, however, represents a fundamental misunderstanding of the district court's decision. To be sure, the district court referred to the "respondeat superior theory" in its decision dismissing the amended complaint. ROA, Vol. 1 at 187. But the district court did so only in the context of discussing the § 1983 claims that Franklin asserted against The Geo Group. More specifically, the district court concluded that The Geo Group could not be held liable under § 1983 simply because it employed people, i.e., Anaya and Douglas, who allegedly violated Franklin's constitutional rights. Instead, the district court noted that Franklin was required, but failed, to allege that Anaya and Douglas acted pursuant to a corporate custom or policy in violating Franklin's constitutional rights. For that reason, the district court dismissed the § 1983 claims asserted against The Geo Group.

As for Franklin's tort claims against The Geo Group, the district court concluded only that Franklin was not a party to, or an intended beneficiary of, the alleged "contractual agreement between [The] Geo Group and Union County." *Id*. at 190. Notably, Franklin has not challenged this part of the district court's decision.

IV

The decision of the district court is AFFIRMED in part, REVERSED in part, and the matter REMANDED to the district court for further proceedings consistent

with this order. Franklins' motion for leave to proceed without prepayment of costs and fees is GRANTED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge