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APPELLANT PRO SE:

ERIC D. SMITH
New Castle, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ERIC D. SMITH,	)	
	)	
Appellant-Plaintiff	)	
	)	
vs.	)	No. 33A01-0905-CV-215
	)	
JEFFREY WRIGLEY, EDWIN G. BUSS, JAMES WYNN,	)	
	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Michael Peyton, Judge
Cause No. 33D01-0810-PL-29

Setpember 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Eric D. Smith filed a complaint under 42 U.S.C. § 1983 against Jeffrey Wrigley, the superintendent of New Castle Correctional Facility; Edwin G. Buss, the commissioner of the Department of Correction; and James Wynn, the director of classification for the Department of Correction. The trial court determined his complaint was frivolous and dismissed it. We affirm.

FACTS AND PROCEDURAL HISTORY

Smith's complaint alleges he is being held in a segregated unit at New Castle Correctional Facility, that he has been in segregation since October 29, 2003, and that he is to remain in segregation until December 26, 2014. Smith alleges he has been diagnosed with depression and segregation is exacerbating his condition. He requested a declaration that "it violates the Eighth Amendment to segregate a prisoner with mental disorders and illnesses, and that defendants was [sic] deliberately indifferent to the harm that segregation caused Smith," and an injunction to "restore Smith's privileges and rights as a prisoner or to release Smith from segregation and afford him adequate treatment for his mental conditions." (Appellant's App. at 28-29.) He also sought compensatory and punitive damages.

On April 2, 2009, the trial court entered an order dismissing Smith's complaint:

> Examining the Plaintiff's seventeen (17) page complaint as a whole, the Court comes to the conclusion that his claim is frivolous with it having been made primarily to harass the Defendants and lacks an arguable basis either in law or fact. As such, the claim should be dismissed.

(Appellant's Br. at 15.)[1]

[1] Smith has not included a copy of the order in his appendix, as required by Ind. Appellate Rule 50(A)(2)(b).

DISCUSSION AND DECISION

The trial court dismissed Smith's claim pursuant to Ind. Code § 34-58-1-2, which provides:

> (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:
>
> (1) is frivolous;
>
> (2) is not a claim upon which relief may be granted; or
>
> (3) seeks monetary relief from a defendant who is immune from liability for such relief.
>
> (b) A claim is frivolous under subsection (a)(1) if the claim:
>
> (1) is made primarily to harass a person; or
>
> (2) lacks an arguable basis either in:
>
> (A) law; or
>
> (B) fact.

We review *de novo* a dismissal pursuant to this statute. *Smith v. Maximum Control Facility*, 850 N.E.2d 476, 479 (Ind. Ct. App. 2006). We look only to the well-pleaded facts contained in the complaint. *Id*.

Smith's complaint acknowledges he was required to exhaust administrative remedies before filing a complaint in the trial court. *See Higgason v. Stogsdill*, 818 N.E.2d 486, 489 (Ind. Ct. App. 2004) (prisoners must exhaust administrative remedies before filing a lawsuit complaining of prison conditions), *trans. denied*. He alleges he filed a grievance regarding the conditions of his segregation, but staff has not responded to it or made an appeal available. He further alleges the defendants instruct employees to not answer grievances so that prisoners cannot exhaust their remedies. Smith attached a copy of a grievance to his complaint. The grievance alleges Smith is being denied mental health care and the conditions of the segregation unit are exacerbating his mental

illnesses. Smith's complaint, however, makes additional unrelated allegations, including that he has been denied hygienic supplies and meals and that he was once beaten "for no reason" while he was in handcuffs and ankle shackles, resulting in a broken nose. (Appellant's App. at 25.) Assuming *arguendo* that Smith's claims about his mental condition are properly before us due to a lack of response to his grievance, it is plain that these additional unrelated claims are not. *See American Heritage Banco, Inc. v. McNaughton*, 879 N.E.2d 1110, 1115 (Ind. Ct. App. 2008) ("A court should not accept as true allegations that are contradicted by other allegations in the complaint or exhibits attached to or incorporated in the pleading."). Therefore, the claims about hygienic supplies, meals, and being beaten lack an arguable basis in law and were properly dismissed.

Paragraph 7 of Smith's complaint begins, "Imagine yourself just being taken to a cell and kept there 23-24 hours a day." (Appellant's App. at 21.) The paragraph continues on for two pages, inviting the court to imagine certain conditions. Smith did not allege that he is subject to any of these conditions; the paragraph was phrased entirely as a hypothetical. The trial court was not required to accept Smith's invitation to imagine hypothetical scenarios. *See State ex rel. Indiana State Bd. of Tax Comm'rs v. Indiana Chamber of Commerce, Inc.*, 712 N.E.2d 992, 996 (Ind. Ct. App. 1999) (courts act only in real controversies involving demonstrable injury and do not engage in abstract speculation). The allegations of paragraph 7 lack an arguable basis in law and fact and were properly subject to dismissal.

Several other paragraphs of Smith's complaint allege generally that life in a segregation unit is difficult. He alleges ninety percent of prisoners in Indiana who are segregated for six months or more return to prison after release and that many of these prisoners are released without obtaining education or other help. He also alleges a human rights group reported that two supermax units at other Indiana prisons have "harmful and cruel conditions." (Appellant's App. at 19.) Smith cites *Wilkinson v. Austin*, 545 U.S. 209, 211 (2005), for the proposition that confinement in a supermax unit imposes "an atypical and significant hardship." However, *Wilkinson* does not hold that confinement in a supermax unit violates the Eighth Amendment; it holds prisoners must be afforded due process before being placed in such a unit. Smith's own complaint acknowledges he has not been "clear of conduct for any period of six months since the year 2004, and as a result, he has been retained in credit time class 3 since 2004." (Appellant's App. at 35.) *See also* Ind. Code § 35-50-6-7(a) (inmates who have been charged with a new crime while confined or who have violated a rule of the facility or the DOC may be assigned to credit class III). Smith cites no authority that confinement in a supermax unit is constitutionally impermissible despite his repeated misconduct.

Having sifted through the extraneous matter in Smith's complaint, we arrive at his main contention: that he is being denied mental health care and that he has a mental illness that is exacerbated by the conditions of his confinement. However, Smith contradicts himself in his complaint by acknowledging that he is receiving medication. Aside from medication, Smith does not allege any other necessary treatment is being denied. Smith claims to have read federal appellate decisions holding the Eighth

Amendment is violated when the conditions of confinement exacerbate a mental illness, but he does not cite them. An argument is waived when it is not supported by citation to authority. Ind. Appellate Rule 46(A)(8)(a); *Donaldson v. State*, 904 N.E.2d 294, 301 (Ind. Ct. App. 2009). We will not search case law to develop Smith's contention that, despite his frequent misconduct in prison, his mental illness makes it improper for him to be placed in segregation.

Affirmed.

BAKER, C.J., and BARNES, J., concur.