

Affirmed and Opinion filed May 3, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-01426-CV

FLOYD WASHINGTON, Appellant

V.

GARY L. JOHNSON, Appellee

**On Appeal from the 12th District Court
Walker County, Texas
Trial Court Cause No. 20,640**

OPINION

Appellant, proceeding *pro se, in forma pauperis*, appeals from a trial court order dismissing his application for habeas corpus relief as frivolous under Chapter 14 of the Civil Practices and Remedies Code. Finding no abuse of discretion, we affirm.

Appellant, an inmate at the Ellis Unit of the Texas Department of Criminal Justice-Institutional Division, filed an "Application for Writ of Habeas Corpus," complaining that he was found guilty during a prison disciplinary proceeding and lost 120 days of good-conduct credit against his sentence. In his filing, appellant complained that he was denied due process

during the disciplinary proceeding because the hearing officer refused to call “Sgt. Dean” as a witness on his behalf.

When appellant filed his application for habeas relief, he filed a request for leave to proceed *in forma pauperis* under Rule 145 of the Texas Rules of Civil Procedure. Because appellant was *pro se* and proceeding *in forma pauperis*, the trial court ordered an evidentiary hearing under Chapter 14 to determine whether any of appellant’s contentions had an arguable basis in fact or in law. After the hearing, the trial court found appellant’s application frivolous and dismissed it.

Appellant complains in a single point of error that the trial court erred by dismissing his habeas corpus application as frivolous and that he was denied due process of law because Chapter 14 does not apply to applications for habeas corpus relief. He argues that his habeas application should have been forwarded, instead, to the Court of Criminal Appeals for disposition in accordance with article 11.07 of the Code of Criminal Procedure.

Suits filed by inmates proceeding *in forma pauperis* are governed by Chapter 14 of the Civil Practices and Remedies Code. TEX. CIV. PRAC. & REM. CODE ANN. § 14.002 (Vernon Supp. 2000). A trial court can review an application for writ of habeas corpus and deny the application for the writ on grounds that the application is frivolous. *See Ex parte Martell*, 901 S.W.2d 754, 755 (Tex. App.—San Antonio 1995, no pet.) (citing *Ex parte Hargett*, 819 S.W.2d 866, 868 (Tex. Crim. App. 1991)). At least one Texas court has applied Chapter 14’s predecessor to an inmate’s application for habeas corpus relief. *See Ex parte Benavides*, 801 S.W.2d 535, 536-37 (Tex. App.—Houston [1st Dist.] 1990, writ dismissed w.o.j.) (applying Chapter 13 of the Civil Practices and Remedies Code to inmate’s application for writ of habeas corpus).

Here, appellant’s original pleading was accompanied by a request to proceed *in forma pauperis*. Furthermore, appellant’s pleading was styled *Floyd Washington v. Gary Johnson, et al.*, resembling a lawsuit, rather than *Ex parte Floyd Washington*, resembling an application

for writ of habeas corpus. Although the initial pleading was entitled “Application for Writ of Habeas Corpus,” the trial court may have interpreted the pleading as a lawsuit complaining about an alleged violation of appellant’s constitutional rights. Under these facts, we determine that the trial court did not err in applying Chapter 14 to appellant’s habeas corpus application.

Under Chapter 14, a trial court has broad discretion to dismiss an inmate’s suit if the court finds the claim frivolous or malicious. *Martinze v. Thaler*, 931 S.W.2d 45, 46 (Tex. App.—Houston [14th Dist.] 1996, writ denied). We review a trial court’s dismissal of an action as frivolous or malicious under an abuse of discretion standard. *Id.* Matters regarding “loss of good time credit” and “inmate classification” stemming from prison disciplinary proceedings are not cognizable claims for purposes of habeas corpus review. *Ex parte Palomo*, 759 S.W.2d 671, 674 (Tex. Crim. App. 1988); *Ex parte Brager*, 704 S.W.2d 46 (Tex. Crim. App. 1986). These issues are instead committed to the discretion of the prison administrators. *Palomo*, 759 S.W.2d at 674. Such claims for relief must be addressed administratively through the Texas Department of Criminal Justice and not through a writ of habeas corpus. *Id.*

Here, the record shows that appellant’s due process claim was the subject of an “Inmate Grievance Form” filed with the Texas Department of Criminal Justice, Institutional Division. The claim was reviewed, and no procedural error was identified. The record shows that “Sgt. Dean” submitted a statement corroborating the allegations against appellant. The record further shows that the guilty finding was appropriate because during a preliminary investigation, appellant admitted his guilt. Appellant’s administrative appeal was, therefore, denied.

Appellant’s complaint in connection with the loss of good time is not subject to habeas corpus review. The trial court, therefore, did not abuse its discretion in dismissing his application of a writ of habeas corpus as frivolous. Appellant’s sole point of error is overruled, and the trial court’s decision is affirmed.

PER CURIAM

Judgment rendered and Opinion filed May 3, 2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.¹

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¹ Senior Chief Justice Paul C. Murphy sitting by assignment.