Benavides v. Lucio et al

2019 | Cited 0 times | S.D. Texas | June 5, 2019

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

BROWNSVILLE DIVISION ERNESTO BENAVIDES, JR., § Plaintiff, § § v. § Civil Action No. 1:18-cv-0159 § OMAR LUCIO, et al., § Defendants. §

REPORT AND RECOMMENDATION Complaint for Civil Rights Pursuant to 42 U.S.C. § 1983 and his Memorandum in Support (hereinafter, collectively, 2. The Court is also in receipt of Defendants Omar Lucio, Samuel Sanchez, Victor Solis,

Rule 12(b)(6) Motion to Dismiss (hereinafter, . Dkt. No. 23. For the reasons provided below, it is recommended that the Court DISMISS for failure to state a claim upon which relief may be granted, and that his Motion to Appoint Counsel (Dkt. No. 27) be DISMISSED AS MOOT. It is further recommended that the Clerk of Court be directed to close this case.

I. Jurisdiction The alleged events giving rise to this civil action occurred within this District, and this Court has jurisdiction because Benavides alleges violations of federal law in his Complaint. See 28 U.S.C. §§ 1331, 1391(b)(2).

United States District Court Southern District of Texas

ENTERED June 05, 2019 David J. Bradley, Clerk II. Background and Procedural History Benavides, a prisoner in state custody, filed his § 1983 Complaint on October 5, 2018. Dkt. Nos. 1, 2. In his Complaint, Benavides alleges multiple violations of his constitutional rights by Defendants. Construing his pro se filings liberally, 1

Benavides Complaint sets out the following claims, although not in this order:

(1) Beginning in 2013, Benavides .

because his trial lawyer failed to appeal his pre- Id. (errors in original). (2) -of-time Appeal

developing a proper arguement which is a bi-product of not having access to (errors in original). (3) [r]eprisal has been taken against him with malice and

deliberate indifference for exercising his constitutional right to access the As examples, Benavides

claims Entire C- of the jail Apparent reason and Lt. Lt. - CId. at 1 (errors

in original). (4) investigating which was a bi-product of reprisal tak Dkt. No. 2 at 2 (errors in original).

Defendants filed a Motion to Dismiss in response to contending

exhaust administrative remedies as required by the Prison Litigation Reform Act , or because the Complaint fails to state a claim upon which relief can be granted. Dkt. No. 23 at 1; 42 U.S.C. § 1997e(a) (prohibiting prisoners from bringing

1 See Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976).

ny other Federal law . . . until such administrative remedies as are see also FED. R. CIV. P. 12(b)(6). In the alternative, Defendants request the Court order Benavides to file a more definite statement of his claims. Dkt. No. 23 at 1; see also FED. R. CIV. P. 12(e).

Dismiss nd Supplemental Statement of the Case and Relief . In his Response, Benavides claims , as a result, Id. at 1. Benavides further asserts that he has suffered

Physical I P [Benavides] and placing him under unreasonable sanctions to discourage him from

accessing the courts[.] Id.

On January s to

courts in 2013. Dkt. No. 28 at 1. The Court specified that Benavides was to include: he was incarcerated during 2013 when he made requests for access to the courts, (2) to whom he made these requests, (3) what, if any, response he was given, (4) (5) any other facts that he believes will help the Court assess Id.

Benavides then Supplemental Statement, Benavides explained plea bargain for 15 years but, [he] had a desire to appeal a pretrial hearing on a motion

to suppress evidence[.] Id. and did not estimate how many requests were made. Id. Benavides claims he was told [the] Law Library[,] but did not specify who told him this. Id. Benavides stated that he had a court-appointed lawyer at the [.] Id. at 2. He does not directly address when or how he discovered that his limitations period had expired, except to say that he was informed, at some unspecified time, that his appeal of the pretrial Id. He also states that 2017 and the begg and that it was [his] file a notice of appeal Id. at 2 (errors in original).

Provide a More Definite Statement and Supplemental Rules 12(b)(1) & 12(b)(6) Motion

Supplemental Response, Defendants largely reiterate and expand upon the arguments

they made in their Motion to Dismiss. See Dkt. No. 23. Defendants also argue that Benavides did have access to the courts in 2013, via his court-appointed attorney. Dkt. No. 42 at 11. Defendants conclude that, because he had a court-appointed attorney, Benavides was not denied his constitutional right of access to the courts. Id. Defendants

-appointed attorney fell below constitutional standards by failing to appeal a ruling or failing to inform Benavides of case-related developments is a separate issue. Id. No. 44.

III. Legal Standards Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of an action for failure to state a claim upon which relief can be granted. FED. R. CIV. P must contain either direct allegations on every material point necessary to sustain a

recovery or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial. A statement of facts that merely creates a suspicion that t Campbell v. City of San Antonio, 43 F.3d 973, 975 (5th Cir. 1995) (citing 5 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, CIVIL 2 . All reasonable inferences must be drawn in favor of the non-movant s claims. Lowrey v. Texas A & M Univ. Sys., 117 F.3d 242, 247 (5th Cir. 1997). A pro se litigant s pleadings should be afforded a liberal construction, even if they are inartfully phrased. See Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

If the complaint does not contain an element which is a prerequisite to obtaining relief, dismissal is proper. Clark v. Amoco Prod. Co., 794 F.2d 967, 970 (5th Cir. 1986). In reviewing a Rule 12(b)(6) motion, a court must consider all of the plaintiff s well-pleaded facts as true and view them in the light most favorable to the plaintiff. Johnson v. Johnson, 385 F.3d 503, 529 (5th Cir. 2004) (citing Great Plains Trust Co. v. Morgan Stanley Dean

Witter & Co., 313 F.3d 305, 312 (5th Cir. 2002)). conclusions masquerading as factual conclusions will not suffice to prevent a motion to

Southern Christian Leadership Conference v. Supreme Court of Louisiana, 252 F.3d 781, 786 (5th Cir. 2001) (quoting Fernandez-Montes v. Allied Pilots Ass n, 987 F.2d 278, 284 (5th Cir. 1993)).

Dismissal for failure to state a claim does not require a determination that, beyond a doubt, the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). to

Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (internal citation omitted). that allows the court to draw the reasonable inference that the defendant is liable for the

Iqbal, 556 U.S. at 678. Plausibility will not be found where the claim elements of a cause of action[.] Twombly, 550 U.S. at 555. Nor will plausibility be found

merely consistent with devoid of further factual

Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557).

IV. Discussion , Federal Rule of Civil Procedure 12(b)(1), and Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 23; 42 U.S.C. § 1997e; FED. R. CIV. P. 12(b)(1); FED. R. CIV. P. 12(b)(6). Defendants first

argue that Benavides has not exhausted his administrative remedies as required by the PLRA. Dkt. No. 23 at

that Benavides did file through the administrative process were answered. Id. at 5. Defendants argue this shows Benavides to continue pursuing administrative remedies prior to filing this suit. Id. at

placed him on commissary restriction,

26 at 1. In his Supplemental Statement and Supplemental Reply, Benavides does not provide any additional specificity about attempts to exhaust administrative remedies. See Dkt. Nos. 38, 44. Instead, he states that his access to the courts claim is rooted in the First Amendment, so exhaustion is not required. Dkt. No. 44 at 3.

se, the burden is on [Defendants] to demonstrate that [Benavides] failed to exhaust available administrative remedies. Dillon v. Rogers, 596 F.3d 260, 266 (5th Cir. 2010); see also Jones v. Bock, 549 U.S. 199, 216, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007). The requirements for exhaustion are Jones, 549 U.S. at 218 (s requirements, and not the PLRA, that define

the boundaries of proper exhaustion Wright v. Hollingsworth, 260 F.3d 357, 358 (5th Cir. appropriate grievance procedures or enables judges, by creative interpretation of the exhaustion doctrine, to prescribe or ov Little v. Jones,

607 F.3d 1245, 1249 (10th Cir. s procedural requirements define the

Here, Defendants have not submitted documentation regarding what procedures Benavides was required to follow prior to filing suit. Aside from referencing the PLRA which is not itself a source of grievance procedures Defendants assert that Benavides without further describing the process. Dkt. No. 23 at 5. On the limited record they

have provided, Defendants have failed to meet their burden on the affirmative defense of exhaustion. 2

See Cantwell v. Sterling, 788 F.3d 507 (5th Cir. 2015); Scott v. Poret, 548 Fed. Appx. 160 (5th Cir. 2013); , 301 Fed. Appx. 386 (5th Cir. 2008).

Defendants also argue that Complaint should be dismissed for failure to state a claim upon which relief can be granted. See FED. R. CIV. P. 12(b)(6). The Court will address each claim set out in Complaint. 3

The claims have been reorganized and re-ordered for clarity.

A. Because His Trial Attorney Failed to Appeal a Pre-trial Hearing

Piotrowski v. City of Houston, 237 F.3d 567, 576 (5th Cir. 2001) (citing Pete v. Metcalfe,

2 The Court notes that this does not equate to a factual finding that Benavides did exhaust his on the affirmative defense of exhaustion. 3 pro se Complaint is liberally construed. Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1995).

8 F.3d 214, 217 (5th Cir. 1993)). -year statute of limitations for personal injury actions applies to § 1983 claims filed in the King-White v. Humble Indep. Sch. Dist., 803 F.3d 754, 759 (5th Cir. 2015); see also TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(section 1983 Harris v. Hegmann, 198 F.3d 153, 157 (5th Cir. 1999)

(quoting Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989)). The prescriptive period

remedies. Harris

H after his trial because his trial lawyer failed to appeal his pre-trial hearing[.] 2 at 1. valuate

statement. Dkt. No. 28. The Court ordered Benavides to include the following

information, to the extent possible: (1) where he was incarcerated during 2013 when he made requests for access to the courts, (2) to whom he made these requests, (3) what, if Id. Pursuant to that Order, Benavides

filed his Supplemental Statement, but did not provide all of the requested information. Dkt. No. 38. Benavides has not stated where he was incarcerated in 2013 when he made requests for access to the courts, nor provided any information regarding how he found out his 30-day limitations period to file a petition for discretionary review had expired. that, through diligent research and perseverance, [he] discovered that there was a deadline of thirty days[.] Id. at 2 (errors in original). Appointed lawyer . . . failed to file notice to filed a separate case based on claims of ineffective assistance of counsel. Id. (errors in

original).

There are two separate reasons why this claim should be dismissed. First, Benavides has failed to provide the Court with any detail regarding when and how he was first informed that his thirty-day limitations period had expired. In an action under 28 U.S.C. § 1915, 4

courts . . [and] [d]ismissal is appropriate if it is clear from the face of the complaint that the claims Harris, 198 F.3d at 156; see also Stanley v. Foster, 464 F.3d 565, 568 (5th Cir. 2006); Gartrell v. Gaylor, 981 F.2d 254, 256 (5th Cir. 1993); Ali v. Higgs, 892 F.2d 438, 440 (5th Cir. 1990). Even after allowing Benavides the opportunity to further explain his 2013 claim, the Court still does not have sufficient information to determine when Benavides first received notice that he had a thirty-day window during which to appeal, or when he first received notice that the thirty days had expired.

In his Supplemental Statement, Benavides states that he was informed that his list the date he received that notification. Dkt. No. 38 at 1. He states that when he received the notification that his appeal was procedurally barred . Id. at 2

4 Section 1915 applies to the instant case. See In Forma Pauperis); see also 28 U.S.C. § 1915.

(errors in original). Benavides claims that it was not until later sometime toward the end of 2017 or the beginning of 2018 that Id. -

barred, the Court is tasked with considering Williams v. Jackson, 204 F.3d 1114, 1114 (5th Cir. 1999) (per curiam) (citing Helton v. Clements, 832 F.3d 332, 335(5th Cir. 1987)). Said another way, because Benavides fails to provide any detail regarding when he began asking for access to a law library, legal materials, or counsel, and when he was denied access to those resources, the Court is hindered from making a determination about the timeliness of the 2013 claims in his Complaint. incarceration regarding the

timeliness of these claims. 5

Even assuming his claims related to institutional action taken in 2013 were timely filed, Benavides still has failed to state a claim for denial of access to the courts. An quate, Bounds v. Smith, 430 U.S. 817, 822, 97 S. Ct. 1491, 52 L. methodology but rather the conferral of a capability the capability of bringing

5

status . . . and do not consti Rood v.

Quarterman, No. 09 1923, 2009 WL 2018991, *2 (S.D. Tex. Jul. 10, 2009); see also Horne v. Cain, No. 09

5509, 2010 WL 1332977 (E.D. La. Feb. 24, 2010); Bunley v. Jones, No. 06 2941, 2009 WL 2868427 (E.D. La. Aug. 11, 2009).

Lewis v. Casey, 518 U.S. 343, 356, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996). The Supreme Court has stated:

[P]rison law libraries and legal assistance programs are not ends in themselves, but Bounds did not create an abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury simply by establishing that his . . . [T]he inmate therefore must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim. Id. at 351 (emphasis added). See also Brewer v. Wilkinson, 3 F.3d 816, 821 (5th Cir. he right of access] to encompass more than the ability of an inmate to prepare and transmit a necessary legal document to a Mann v. Smith he] right of access includes the ability to file a legally sufficient c

Thus, in addition to identifying how his access was restricted, an inmate alleging denial of the right of access to courts must demonstrate a relevant, actual injury t. Brewster v. Dretke, 587 F.3d 764, 769 (5th Cir. 2009) (citing Lewis, 518 U.S. at 351); Walker v. Navarro County Jail, 4 F.3d 410, 413 (5th Cir. 1993). The right of access is not unlimited; it encompasses only a reasonably adequate opportunity to file nonfrivolous legal claims challenging convictions or conditions of confinement. Johnson v. Rodriguez, 110 F.3d 299, 310 11 (5th Cir. 1997). To prevail, an inmate must allege that his ability to pursue a by the denial. Brewster, 587 F.3d at 769 (citing Christopher v. Harbury, 536 U.S. 403, 415, 122 S. Ct. 2179, 153 L. Ed. 2d 413 (2002)).

Benavides contends that his court-appointed attorney should have filed a notice of appeal within the thirty-day window, but failed to do so. On this basis, Benavides argues that he was denied access to the courts in 2013. But the very courts, because he had a court-appointed attorney during the relevant time. Said

differently, Benavides was able to access the courts through his legal representative. 6 Further, Benavides has filed multiple court cases since 2013, undermining his assertion that he was not able to access the courts. Benavides has filed three separate petitions in state court pursuant to Article 11.07 of the Texas Code of Criminal Procedure in 2014, 2015, and 2018. 7

prepare and transmit a necessar Eason v. Thaler, 73 F.3d

1322, 1328 (5th Cir. 1996). Benavides has plainly been able to do so.

Additionally, Benavides has not alleged any specific injury in connection with his 2013 claims. In order to be entitled to § 1983 relief, an inmate must demonstrate that he was Brewster, 587 F.3d at 769. Benavides has merely asserted that he missed a thirty-day window to appeal some pretrial

evidentiary ruling, which is not sufficient to state a claim for relief.

6 As Benavides concedes, the quality of representation is a different matter. Benavides has challenged the adequacy of his legal counsel in separate proceedings. See Benavides v. Davis, 1:18-cv-00202. 7 -1 Results were obtained at this web address, first accessed on January 2, 2019: http://search.txcourts.gov/CaseSearch.aspx?coa=coscca&s=c. It is proper for the Court to take judicial See FED. R. EVID. 201; see also Wilson v. Huffman, 712 F.2d 206, 211 (5th Cir. 1983) (permitting judicial notice of the record in prior, related proceedings) (superseded by statute on other grounds).

Thus, should be dismissed.

B. -of-Time Appeal But

Has Been Unsuccessful as a Result of Limited Access to the Courts To state a claim for relief pursuant to 42 U.S.C. § 1983, a plaintiff must: (1) allege a violation of a right secured by the Constitution or laws of the United States, and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law. Leffall v. Dallas Indep. Sch. Dist., 28 F.3d 521, 525 (5th Cir. 1994). The alleged deprivation must be intentional, as negligent conduct cannot serve as the basis for a § 1983 claim. See Jackson v. Procunier, 789 F.2d 307, 310 (5th Cir. 1986) (citing Davidson v. Cannon, 474 U.S. 344, 106 S. Ct. 668, 88 L. Ed. 2d 677 (1986); Daniels v. Williams, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986)).

. . . the fundamental rights protected by the Constitution. Jackson, 789 F.2d at 310

(internal citations omitted). This right is grounded in the First Amendment s right to petition for the redress of grievances and the Fourteenth Amendment s guarantees of procedural and substantive due process. Id. The right of access, however, is

opportunity to file nonfrivolous legal claims challenging their convictions or conditions Jones v. Greninger, 188 F.3d 322, 325 (5th Cir. 1999). Further, only deliberate conduct can serve as the basis for a claim of denial of access to the courts; negligent conduct will not suffice. Jackson, 789 F.2d at 310; Richardson v. McDonnell, 841 F.2d 120, 122 (5th Cir. 1988). Finally, to properly state a claim of denial of access

to the courts, a plaintiff must demonstrate that his position as a litigant was prejudiced by his denial of access to the courts. Eason, 73 F.3d at 1328 (5th Cir. 1996) (citing Walker v. Navarro County Jail, 4 F.3d 410, 413 (5th Cir. 1993)); Brinson v. McKeeman, 992 F. Supp. 897, 911 (W.D. Tex. 1997) (finding plaintiff's right of access claim inadequate because he failed to allege facts sufficient to arguably show that he suffered prejudice as a result of the defendant conduct). Here, Benavides has not made a plausible claim alleging a violation of his constitutional right of access to the courts. Notwithstanding his repeated allegations that he has been denied access to the courts, Benavides

states in his Response that he has filed documents with the Texas Court of Criminal Appeals. See Specifically, Benavides was able to file or the Texas Court of Criminal Appeals. Dkt. No. 1-1 at 3. He received notice of that state

decision and submitted the notification as part of the instant case. Id. In addition, Benavides has filed three separate petitions in state court pursuant to Article 11.07 of the Texas Code of Criminal Procedure in 2014, 2015, and 2018. 8

Where inmates etition for discretionary review to state appellate courts, the Fifth Circuit has held that the constitutional requirement of access to the courts has not been violated. See Conner v. Texas Court of Criminal Appeals, 481 Fed. Appx. 952 (5th Cir. 2012); Brewer v. Wilkinson, 3 F.3d 816, 821 (5th Cir. 1993); Crowder v. Sinyard, 884 F.2d 804, 814 (5th Cir. 1989). Benavides has not shown, in light of his filings with the Texas Court of Criminal Appeals, that the Defendants violated his constitutional right of access to the courts.

8 See supra, n.7.

access-to-the-court claims are based on the lack of a physical law library . See Dkt. No. 1 at 3 4; Dkt. No. 2 at the courts, however, does not require that a physical law library or research materials be provided. While the precise contours of a prisoner s right of access to the courts remain somewhat obscure, the Supreme Court has not extended this right to encompass more than the ability of an inmate to prepare and transmit a necessary legal document to a court. Brewer, 3 F.3d at 821 (citing Wolff v. McDonnell, 418 U.S. 539, 576, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)); see also Procunier v. Martinez, 416 U.S. 396, 419 22, 94 S. Ct. 1800, 40 L. Ed. 2d 224 (determining that the right of access to the courts prohibits prison officials from unreasonably limiting an inmate s access to legal personnel who can provide essential legal advice); cf. Houston v. Lack, 487 U.S. 266, 270 76, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988) (noting that prison authorities cannot take actions which delay the mailing of an inmate s legal papers when such a delay effectively denies the inmate s access to the courts). do not allege that he was prohibited from preparing and transmitting necessary legal documents to a court.

Even assuming, arguendo, did rise to the level of a constitutional violation, he has failed to show that his position as a litigant was prejudiced by the purported conduct. He alleges that, in pursuing his out- of-time appeals arguement which is a bi-

(errors in original). This conclusory allegation, without more, does not demonstrate prejudice.

C.

Result of His Request(s) for Access to the Courts To state a valid § 1983 claim for retaliation, a prisoner must allege: (1) a specific constitutional right, (2) the defendants intent to retaliate against the prisoner for his or her exercise of that right, (3) a retaliatory adverse act, and (4) causation.

McDonald v. Steward, 132 F.3d 225, 231 (5th Cir. 1998). The inmate must allege more than his personal belief that he is the victim of retaliation. Johnson v. Rodriguez, 110 F.3d 299, 310 (5th Cir.) cert. denied, 522 U.S. 995, 118 S. Ct. 559, 139 L. Ed. 2d 400 (1997). Mere conclusionary allegations of retaliation will not be enough to withstand a proper motion for dismissal of the claim. Woods v. Smith, 60 F.3d 1161, 1166 (5th Cir. 1995). inmate must produce direct evidence of motivation or, the more probable scenario,

Id. (internal citation omitted). Further, if the inmate is unable to point to a specific constitutional right that has been violated, the retaliation claim will fail. Tighe v. Wall, 100 F.3d 41, 43 (5th Cir. 1996) (dismissing an inmate s claim for failure to demonstrate a violation of a constitutional right); Woods, 60 F.3d at 1166 (noting that, claim of retaliation an inmate must allege the violation of a specific constitutional

As discussed previously, Benavides has failed to properly allege the violation of a constitutional right by the Defendants. Benavides has also failed to produce evidence that Defendants were motivated to retaliate against him, or a chain of events from which the Court could reasonably infer retaliation. See Woods, 60 F.3d at 1166.

D. His Commissary Account and Other Claims Related to Commissary

Restriction To establish a due process violation in the prison context, a plaintiff must show that he or she was deprived of a liberty interest protected by the Constitution or statute. See Richardson v. Joslin, 501 F.3d 415, 418 19 (5th Cir. 2007) (citing Sandin v. Conner, 515 U.S. 472, 479 n.4, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995)); see also Zebrowski v. United States Federal Bureau of Prisons, 558 Fed. Appx. 355, 358 59 (5th Cir. 2014) significant hardship on the inmate in relation

Driggers v. Cruz, 740 F.3d 333, 338 (5th Cir. 2014) (quoting Sandin, 515 U.S. at 484). Thus, in determining whether an individual has been denied due process, the Court first considers whether the allegations implicate a protected liberty or property interest. See , 490 U.S. 454, 460, 109 S. Ct. 1904, 104 L. Ed. 2d 506 the procedures attendant upo Id.

Here, Benavides claims that his due process rights were violated when he was placed on commissary restriction, and when $10.00 was deducted from his commissary account to replace his damaged identification bracelet. He contends that these actions were taken as retaliation for his request for access to the courts. Dkt. No. 1 at 4. As noted in , (id.) supporting a conclusion restrictions were not retaliatory, but disciplinary. Additionally, Benavides states

Defendants charged his commissary account $10.00 to replace an identification

wristband which he claims was damaged by a mentally ill inmate. Dkt. No. 2 at 2. Although Benavides may disagree with the outcome of the disciplinary proceedings surrounding his damaged

identification bracelet, he is only entitled to procedural due process with respect to these actions if they impacted protected liberty interests. Ky. , 490 U.S. at 460.

The Supreme Court has explained that the liberty interests of inmates limited to freedom from restraint which, while not exceeding the sentence in such an

unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . nonetheless imposes atypical and significant hardship . . . in relation to the Sandin, 515 U.S. at 484. The Fifth Circuit has further statutes which affect the quantity of time rather than the quality of time served by a

Madison v. Parker, 104 F.3d 765, 767 (5th Cir. 1997) (emphasis added). Neither the temporary loss of commissary privileges nor deducting a $10.00 replacement fee for an inmate identification bracelet implicates a protected liberty or property interest. 9

See Sandin 515 U.S. ; Malchi v. Thaler, 211 F.3d 953, 958 59 (5th Cir. 2000); Madison, 104 F.3d at 768. Accordingly, Benavides has failed to state

a claim for violation of his due process rights.

9 It is unclear whether Benavides intended to bring additional claims for other disciplinary actions taken clothesline, which were referenced in his Complaint. See Dkt. No. 1 at 4. If Benavides did intend to state separate causes of action on these grounds, the same analysis would apply; the claims would fail because Benavides does not have a protected interest in the use of a television or a personal clothesline.

described above fail to state a claim upon which relief can be granted.

V. Recommendation For the reasons provided above, it is recommended that the Court DISMISS No. 27) be DISMISSED AS MOOT. It is further recommended that the Court direct

the Clerk of Court to close the case.

VI. Notice to Parties

days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. Douglass v. United , 79 F.3d 1415 (5th Cir. 1996) (en banc), superseded by statute on other grounds; 28 U.S.C. § 636(b)(1).

SIGNED on this 5th day of June, 2019, in Brownsville, Texas.

_____ Ignacio Torteya, III United States Magistrate Judge