

April 23, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-60888
Conference Calendar

ROY RANDALL HARPER,

Plaintiff-Appellant,

versus

EMMITT L. SPARKMAN, Superintendent; GENE CROCKER, Warden; J.J. STREETER, Deputy Warden, Area IV; ROBERT ARMSTRONG, Chief of Security; EARL JACKSON, Case Manager Supervisor; MARY CRAFT, Case Manager, Unit 32-C; EDDIE QUEEN, Case Manager, Unit 32-C,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:02-CV-144-D-B

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Roy Randall Harper, Mississippi prisoner # 42168, appeals the district court's determination that his 42 U.S.C. § 1983 complaint was barred by res judicata. He argues that the district court erred insofar as it held that the claims raised in Harper v. Showers, 174 F.3d 716 (5th Cir. 1999) and in the instant suit involved the same cause of action.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

We review the district court's determination for plain error only. See Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1429 (5th Cir. 1996) (en banc). Under the doctrine of res judicata, the critical issue in determining whether two complaints involve the same cause of action is not the relief requested or the theory asserted but whether the actions are based on the same nucleus of operative fact. Agrilectric Power Partners, Ltd. v. Gen. Elec. Co., 20 F.3d 663, 665 (5th Cir. 1994). In both the instant suit and in Harper, Harper alleged due process violations associated with his classification as an "escape risk." It therefore cannot be said that the district court plainly erred in determining that these complaints involved the same cause of action.

AFFIRMED.