

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-10909  
Summary Calendar

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JERRY ARAGON,

Plaintiff-Appellant,

versus

THOMAS HINKLE; SANTOS GARCIA; TONY ASH;  
MELISSA L. ARESKOG; LONA CHEAIRS; CRAIG A. RAINES,

Defendants,

TONY ASH,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:96-CV-36  
- - - - -

April 7, 1998

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

Jerry Aragon (#376237), a state prisoner, appeals the magistrate judge's orders granting the motion for summary judgment of defendant prison guard Tony Ash, COIII and denying Aragon's motion to compel responses to his discovery request. Aragon has failed to present evidence showing a genuine issue of whether Ash was subjectively aware of facts from which an

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

inference could be drawn that there was a risk that Aragon would be assaulted by another inmate or whether Ash actually drew such an inference. See Neals v. Norwood, 59 F.3d 530, 533 (5th Cir. 1995). Aragon has not shown substantial prejudice from the magistrate judge's refusal to compel discovery responses. See Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 28 F.3d 1388, 1394 (5th Cir. 1994). Aragon argues that he was misled by the magistrate judge's order of June 30, 1997. Any error resulting from the magistrate judge's statement was harmless since Aragon had ample time to defend against Ash's motion for summary judgment.

The judgment of the district court is AFFIRMED.