

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-30063
Conference Calendar

HUMPHREY TYLER,

Plaintiff-Appellant,

versus

DON HATHAWAY; JOHN SEAL; SOLOMAN, Mr.; SHEILA WHITE,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 99-CV-164

October 17, 2000

Before SMITH, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Humphrey Tyler, Louisiana prisoner # 318515, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous. Tyler argues that he is allergic to seafood, that he is on a no-fish diet, and that he was served a meal with fish seven times over a period of two months at the Caddo Correctional Center. He contends that the nurse (Sheila White) should have better informed the kitchen about his diet, that the manager of the kitchen (Soloman) refused to provide an alternative meal on days the kitchen served fish, and that Sheriff Hathaway and Seal,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the administrator of the prison, were liable in their supervisory capacities.

We review a district court's dismissal of a complaint as frivolous for an abuse of discretion. A district court may dismiss an IFP complaint as frivolous if it lacks an arguable basis either in law or in fact. Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). A complaint lacks an arguable basis in law if it is based on an "indisputably meritless legal theory." Id. (citing Neitzke v. Williams 490 U.S. 319, 325 (1989)).

Tyler's complaint that he had to forego a meal on seven occasions over a two-month period does not rise to the level of a Eighth Amendment constitutional claim. See Berry v. Brady, 192 F.3d 504, 507-08 (5th Cir. 1999). Furthermore, his claims do not allege deliberate indifference but, rather, negligence. See Neals v. Norwood, 59 F.3d 530, 533 (5th Cir. 1995). The district court's dismissal of Tyler's claims as frivolous was not an abuse of discretion.

AFFIRMED.