

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40449
Summary Calendar

LORENZO THOMAS,

Plaintiff-Appellant,

versus

JACKSON COMSTOCK, Individually & in his official capacity as Lieutenant; BOBBY PURVIS, Individually & in his official capacity as Sergeant; JERRY COWEN, Individually & in his official capacity as Correctional Officer III; SAMMY BROWN, Individually & in his official capacity as Correctional Officer III; TERRY VALENTINE, Individually & in his official capacity as Correctional Officer III; GARY HERRING, Sergeant; MICHAEL ROESLER, Captain; KATHRYN BELL, Captain; DENICIA JEFFERSON, Administrative Technician III; SYLVIA PIASTA, Chief of Classification; EUGENE HARBIN, Major; ROBERT TREON, Warden; CEDERIC MCKNIGHT, Warden,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:96-CV-378

March 6, 2001

Before DAVIS, JONES, and DeMOSS, Circuit Judges.

PER CURIAM:*

Lorenzo Thomas, Texas prisoner # 739840, appeals the district court's dismissal as frivolous and for failure to state a claim upon which relief may be granted of his claim that the defendants failed to protect him from sexual assault. Thomas told the defendants that he was receiving threats from members of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

his former gang; the defendants refused to place him in protective custody; and he was subsequently sexually assaulted. Because Thomas has not shown that the defendants were aware of substantial risk that he would be sexually assaulted and disregarded that risk by failing to take reasonable measures to abate it, Thomas has not shown that the district court erred in dismissing his claim. See Farmer v. Brennan, 511 U.S. 825, 847 (1994).

Thomas argues that the district court erred in dismissing his claim without ruling on his objections to the defendants' Martinez report.** Thomas' claim lacks merit as the district court reviewed the record, including Thomas' objections, before dismissing his claim.

Thomas argues that the district court erred in dismissing his claim under 28 U.S.C. § 1915(e) because he paid a partial filing fee. Because Thomas was proceeding IFP in the district court under 28 U.S.C. § 1915(b), the district court did not err in dismissing Thomas' claim under 28 U.S.C. § 1915(e).

Thomas argues that the district court abused its discretion in denying his motion for appointment of counsel. Because Thomas has not shown that his case presented exceptional circumstances warranting the appointment of counsel, he has not shown that the district court abused its discretion in denying his motion for appointment of counsel. See Cooper v. Sheriff, Lubbock County, Tex., 929 F.2d 1078, 1084 (5th Cir. 1991).

** Martinez v. Aaron, 570 F.2d 317 (10th Cir. 1978).

Thomas has filed a motion for appointment of counsel on appeal. Because Thomas' case does not present exceptional circumstances, his motion is DENIED. See Cupit v. Jones, 835 F.2d 82, 86 (5th Cir. 1987). Thomas' motion for reconsideration is also DENIED.

AFFIRMED; MOTIONS DENIED.