

December 9, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-60296  
Conference Calendar

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HENRY C. PAYTON,

Plaintiff-Appellant,

versus

CHRISTOPHER B. EPPS, Commissioner;  
E. L. SPARKMAN, Superintendent; JOHN BEARRY, Dr.,  
MSP Medical Director; LARRY HARDY, Legal Claims Adjudicator,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 4:03-CV-126  
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Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Henry C. Payton, Mississippi inmate # 65110, appeals the dismissal of his civil rights complaint, filed pursuant to 42 U.S.C. § 1983. Payton has filed a Motion for a Preliminary Injunction and/or in the alternative, for a Temporary Restraining Order. Payton asks this court to enjoin the Mississippi Department of Corrections from moving him to another prison unit in retaliation for his filing the instant lawsuit. Payton's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

motion is DENIED. See Moya v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1275-76 (5th Cir. 1973).

Payton argues that the district court erred when it dismissed his complaint for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Payton's allegation that prison officials were negligent for failing to place slip guards and guard rails in the showers where he is housed fails to state a claim because a claim for negligence does not establish an Eighth Amendment violation. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Payton's allegation that prison officials failed to provide adequate medical treatment fails to state a claim because mere dissatisfaction with medical treatment does not rise to a constitutional violation. See id. Last, Payton's allegation that prison officials failed to comply with Mississippi state law when they overcharged him for medical treatment he received fails to state a claim inasmuch as a prison official's failure to follow state regulations does not establish a constitutional violation. See Jackson v. Cain, 864 F.2d 1235, 1251-52 (5th Cir. 1989).

The district court's dismissal of the present case and this court's affirmance of the dismissal count as one strike against Payton for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Payton is WARNED that if he accumulates three strikes he will be barred from proceeding in forma pauperis in any civil action or appeal

filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

AFFIRMED; SANCTIONS WARNING ISSUED.