

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 24, 2009

No. 08-60797
Summary Calendar

Charles R. Fulbruge III
Clerk

EDDIE SHORTY

Plaintiff-Appellant

v.

JIMMY MELTON, Captain, Watch Commander, in his personal and official capacity; ANTHONY TAYLOR, Lieutenant, Escort Team, in his personal and official capacity; LOLA NELSON, Lieutenant, Disciplinary Chairperson, in his personal and official capacity; LAWRENCE KELLY, Superintendent, in his personal and official capacity

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:07-CV-135

Before GARWOOD, SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Eddie Shorty, Mississippi prisoner # 26507, proceeding *pro se*, appeals the dismissal of his *pro se*, in forma pauperis (IFP) civil rights complaint for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(i), § 1915(g). Shorty's complaint alleged, inter alia, that the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

confiscation of his bedding for eighteen days and of his clothing for over two months in the winter of 2007, forcing him “to sleep on a concrete slab with only my shorts in the winter,” violated his rights under the Eighth Amendment.

Given the liberality to be afforded *pro se* pleadings and the absence of a *Spears* hearing or the like, we conclude that this *sua sponte* dismissal for failure to state a claim, without leave to amend, was error. *See, e.g., Wilson v. Seiter*, 111 S.Ct. 2321, 2326-27 (1991); *Helling v. McKinney*, 113 S.Ct. 2475, 2480 (1993).

The district court’s judgment is vacated and the cause is remanded for further proceedings not inconsistent herewith.

VACATED and REMANDED