

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-3738
Conference Calendar

CARL QUIJANO,

Plaintiff-Appellant,

versus

RALPH DEVILLE ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA 89 208 B M1

- - - - -
March 16, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Carl Quijano argues that Ralph Deville used unnecessary and excessive force with the intent to cause pain in violation of the Eighth Amendment. He contends that he posed no threat to Deville and that the officer's purpose was to discourage Quijano from filing further administrative grievances.

The district court adopted the magistrate judge's detailed proposed findings of fact. Moreover, applying the former requirement set forth in Huquet v. Barnett, 900 F.2d 838, 341

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

(5th Cir. 1990), the district court also found that Quijano had not suffered a significant injury and dismissed the Eighth Amendment claim.

The Supreme Court eliminated the "significant injury" requirement in Hudson v. McMillian, ___ U.S. ___, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992), holding that a prisoner need not show a significant injury when prison officials maliciously and sadistically use force to cause harm. Thus, dismissal based solely on the lack of a significant injury would be error. However, the central inquiry in a claim of excessive force is whether there was an unnecessary and wanton infliction of pain violative of the Cruel and Unusual Punishment Clause. Hudson 112 S.Ct. at 999. The district court adopted the magistrate judge's proposed finding that Deville's actions did not constitute a wanton infliction of pain. Because that finding is not clearly erroneous, there is no Eighth Amendment violation under Hudson; and any error is harmless.

Deville has filed a cross-appeal on the retaliatory-cell-search claim, seeking reversal of the district court's judgment in favor of Quijano. Deville contends that the findings of the district court "ignore[] the evidence in this case and totally negate[] the ability of prison officials to conduct searches of any prisoners who commenced or threaten to commence either court actions or administrative remedies." Deville's argument iterates the testimony at the hearings and amounts to a disagreement with the district court's credibility determinations. This Court is bound to defer to the credibility determinations of the trier of

fact. See Wilson v. UT Health Center, 973 F.2d 1263, 1268 (5th Cir. 1992).

AFFIRMED.