

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1722
Conference Calendar

RICHARD EDWARD MCCOY,

Plaintiff-Appellant,

versus

R.D. MCLEOD, Warden, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:91-CV-105
- - - - -

August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Richard Edward McCoy, a prisoner in the Clements Unit of the Texas Department of Criminal Justice - Institutional Division, filed a complaint pursuant to 42 U.S.C. § 1983 against various prison officials related to his work assignment in the prison boot factory. McCoy asserts that prison officials and Dr. Revelle were deliberately indifferent to his serious medical needs arising from his injury in the boot factory. McCoy has not alleged that his injury was ignored, rather he admits that he was

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

taken to the infirmary where his injured thumb was x-rayed and treated with an iodine solution. Further, McCoy admits that when he returned to the infirmary complaining about soreness and tenderness in his thumb, Dr. Revelle prescribed medication and a three-day "lay-in" from work. McCoy's complaint is that he should have been allowed time off from work from the date of the accident.

Allegations of wanton acts or omissions sufficiently harmful to evidence deliberate indifference to a prisoner's serious medical needs are necessary to state a claim for relief under 42 U.S.C. § 1983. Wilson v. Seiter, ___ U.S. ___, 111 S.Ct. 2321, 2323-27, 115 L.Ed.2d 271 (1991); Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Acts of negligence, neglect, or medical malpractice are not sufficient. Fielder v. Bosshard, 590 F.2d 105, 107 (5th Cir. 1979); see Gamble, 429 U.S. at 105-06. McCoy's allegations do not demonstrate a deliberate indifference to a serious medical need.

McCoy contends that his equal protection rights were violated because he was not allowed to earn good-time credits for his work. According to his own allegations, he had been convicted of an "aggravated" crime which did not allow for the earning of good-time credits. "[A] violation of equal protection occurs only when the government treats someone different from others similarly situated" Brennan v. Stewart, 834 F.2d 1248, 1257 (5th Cir. 1988). The prison did not classify or distinguish between "two or more relevant persons or groups."

Brennan, 834 F.2d at 1257. The distinction was made based on the nature of the conviction of each prisoner.

McCoy brings two other challenges to being required to work in the boot factory. First, he contends that being required to work while in prison is slavery. This contention is without merit as the state has the right to make rules regarding whether and under what circumstances prisoners will be paid for work. See Wendt v. Lynaugh, 841 F.2d 619, 621 (5th Cir. 1988). Second, McCoy contends that he is being subjected to cruel and unusual punishment because he is allegedly being required to work 13 hours a day. This allegation has no basis in fact. See Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

Finally, McCoy alleges that he was stripped searched twice a day in a warehouse measuring 30 feet by 50 feet which was open on one end. He acknowledges that the warehouse contained two heaters, but nevertheless alleges that he was subjected to freezing cold and wet conditions which caused him to be constantly sick. As with denial of health care, a complaint of unconstitutional conditions of confinement must allege acts or omissions sufficiently harmful to evidence a deliberate indifference to the prisoner's needs. Wilson, 111 S.Ct. at 2326-27. "[T]he eighth amendment forbids deprivation of the basic elements of hygiene." Daique v. Maggio, 719 F.2d 1310, 1312 (5th Cir. 1983). A court must examine the totality of conditions to determine whether they comport with contemporary standards of decency. Rhodes v. Chapman, 452 U.S. 337, 345-46, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981).

McCoy's allegations are not shocking to contemporary standard of decency. McCoy does not allege that prison officials intentionally placed him the doorway, but only that one end of the warehouse was open to the weather. This allegation is simply that McCoy was briefly uncomfortable while being stripped searched on the days when the weather was cold in Amarillo, Texas. This does not approach the type of barbaric conditions of confinement which deprive a prisoner of identifiable human needs. See Wilson, 111 S.Ct. at 2327; Hutto v. Finney, 437 U.S. 678, 686-87, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978).

Given all of the foregoing, the district court properly dismissed the action under 42 U.S.C. § 1915(d) because McCoy's complaint had no arguable basis in fact or law and no realistic chance of success. See Ancar, 964 F.2d at 468; Pugh v. Parish of St. Tammany, 875 F.2d 436, 438 (5th Cir. 1989).

AFFIRMED.