

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1873  
Conference Calendar

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DANNY DWIGHT HOOKS,

Plaintiff-Appellant,

versus

DALLAS COUNTY SHERIFF,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:92-CV-1927-R  
- - - - -

March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:\*

Danny Dwight Hooks, an inmate at the Dallas County Jail (Lew Sterrett Jail), filed this § 1983 action against the Dallas County Sheriff alleging that the cooks at the jail served bad peas. Hooks argues on appeal that the cook was "very negligent" in serving the bad peas, that this caused him physical illness, and that this constituted cruel and unusual punishment. Hooks' allegations of negligence do not state a claim of cruel and unusual punishment. See Bowie v. Proconier, 808 F.2d 1142, 1143 (5th Cir. 1987). This Court has previously rejected a claim by a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

pretrial detainee of negligent handling of food under the Due Process Clause. See Berry v. Griffith, No. 91-5078 (5th Cir. Apr. 22, 1992) (unpublished). Hooks' claim has no arguable basis in law. See Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1734, 118 L.Ed.2d 340 (1992).

Hooks also contends on appeal that as a result of eating these bad peas, he sustained internal stomach injuries for a long period and was denied medical treatment for these problems. To state a claim for relief under § 1983 for denial of medical care, a prisoner must show that care was denied and that this denial constituted deliberate indifference to his serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104-05, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Hooks did not make these allegations of severe and continuing stomach problems in the district court. The only allegations which he made that could be construed as a claim for denial of medical care were that he got "real sick" and the sheriff did not respond to his request to go to the hospital. Hooks admits in his brief that he was seen by a nurse the day he ate the peas and that she gave him medication for gas. Based on the allegations in his complaint and that admission, Hooks has not alleged deliberate indifference to his serious medical needs.

Hooks did not begin to make allegations of severe internal stomach problems until after his complaint was dismissed. The allegations were made for the first time in his notice of appeal and now in his appellate brief. These allegations will not be considered because they were not raised in the district court. See Beck v. Lynaugh, 842 F.2d 759, 762 (5th Cir. 1988). Even if

this Court would consider these allegations for the first time on appeal, Hooks' claim of denial of medical care would still have no arguable basis in fact because his allegations are "factually frivolous." It is more than just unlikely, it is "wholly incredible" that eating one serving of bad peas could cause the internal damage of which he complains. See Denton, 112 S.Ct. at 1733.

Hooks is warned that filing further frivolous appeals could result in the imposition of sanctions. See Brinkmann v. Johnston, 793 F.2d 111, 113 (5th Cir. 1986).

Hooks' motion for other relief is DENIED because these allegations were not made in the district court. See Beck, 842 F.2d at 762.

AFFIRMED.