

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3435

Summary Calendar

JOHN E. SPELLMAN,

Plaintiff-Appellant,

versus

JACK STEPHENS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
CA 91 1208 L

(April 19, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Prisoner John E. Spellman appeals from the district court's dismissal of his § 1983 suit against Jack Stephens, Sheriff of St. Bernard Parish, and Alvin Vath, Warden of St. Bernard Prison. Spellman contends that the district court improperly denied his request for a jury trial on his due process and Eighth Amendment claims in favor of an evidentiary hearing before the magistrate.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

He adds that even if the decision to hold a hearing in lieu of a trial was otherwise appropriate, various flaws in the proceedings conducted by the magistrate warrant a reversal of the district court's judgment. We find these objections meritless and affirm.

I.

John Spellman filed this § 1983 action in the U.S. District Court for the Eastern District of Louisiana on April 2, 1991. Spellman was an inmate of the St. Bernard Parish Prison at the time of the suit, and his complaint named as defendants Sheriff Jack Stephens, Warden Alvin Vath, the St. Bernard Parish Sheriff's Office, and the Parish of St. Bernard. Spellman's contentions centered on the admitted refusal of prison officials to permit him to exercise outdoors from the time he entered the prison in September 1990 to April 1991. This confinement implicated the Eighth Amendment, Spellman averred, because it caused him to develop indigestion and hemorrhoidal pain. Spellman amended his complaint to include a due process claim in August 1991, after the defendants, according to Spellman, transferred him from outside trusty duty upon learning of this suit.

The case was referred to the magistrate, see 28 U.S.C. § 636 (b) (1) (B), who scheduled an evidentiary hearing for October 3, 1991. Although Spellman had previously filed an (unsigned) demand for a jury trial, he registered no opposition to this procedure. After conducting the hearing, at which Spellman and Warden Vath testified, the magistrate issued a report recommending dismissal of the case. Spellman filed several objections to the magistrate's

adverse recommendation, including an assertion that the cause should not have been heard by her in light of his jury trial demand. The district court, after considering these objections, adopted the magistrate's report and dismissed the case. Spellman has appealed.

II.

Spellman raises several issues on appeal. He first contends that he not only did not consent to the evidentiary hearing before the magistrate, but that this procedure was directly contrary to his request for a jury trial. As the district court held, however, it is well-established that 28 U.S.C. § 636 (b) (1) (B) authorizes district courts to "designate a Magistrate Judge to hear a prisoner's petition challenging the conditions of confinement without the prisoner's consent." See, e.g., McCarthy v. Bronson, 111 S.Ct. 1737, 1740 (1991); Archie v. Christian, 808 F.2d 1132, 1135 (5th Cir. 1987) (en banc); Ford v. Estelle, 740 F.2d 374, 378-79 (5th Cir. 1984). Spellman's challenge of the magistrate's hearing is meritless in light of this settled law; this contention would fail even if we were to assume that he has not waived the claim made in his unsigned motion for a jury trial.

Spellman next argues that the magistrate did not allow him to present documents and call witnesses in support of his case during the hearing. He first maintains that prison officials intentionally withheld medical records which reflect the nature of the ailments he suffered as a result of the defendants' refusal to allow him to exercise outdoors. The record, however, contains a

collection of Spellman's medical records which, according to counsel, constitute all those possessed by the prison. Given Spellman's failure to indicate what might be missing and how these documents might help his case, we will not disturb the district court's finding on this question.

Spellman's assertion that the magistrate prohibited him from calling witnesses is meritless as well. He contended in his objections to the magistrate's report that his requests to call Sheriff Stephens and work supervisor Marty Mellerin were impermissibly denied. The record, however, contains no evidence of any such requests. Prior to the hearing, the magistrate asked the parties to provide a list of potential witnesses. Spellman responded: "Plaintiff at this time has no need to call witnesses unless it will be needed, and request from this court the opportunity to do so should he need witnesses in the event defendants will not produce his requested documents." During the hearing, the magistrate explicitly asked Spellman if he would like to call Stephens and Mellerin as witnesses; Spellman offered no

clear indications that he did.¹ We again will not disturb the district court's findings on this issue.

Next, Spellman briefly argues that the district court erred in initially determining that he had not filed timely objections to the magistrate's report. This statement is true as far as it goes, but neglects to mention that the district court, upon discovering that Spellman had in fact filed objections, reopened the matter in order to give these arguments full consideration before entering judgment.

The final section of Spellman's brief attacks three particular factual findings made by the magistrate. Spellman first insists that the magistrate clearly erred in finding that he performed legal work for fellow prisoners in exchange for additional food. This finding, however, finds unambiguous support in letters in which Spellman chastises two other inmates for not supplying him with the extra food they had promised. Second, Spellman insists, contrary to the testimony at the hearing, that prison officials did

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The Court: You want to call the Sheriff?

[Defense counsel]: No.

Mr. Spellman: To verify I wrote him.

The Court: I believe you. What about Mr. Mellerin?

Mr. Spellman: The one that locked me up, no reason.

[Defense counsel]: We could ask him about some 900
phone numbers.

Mr. Spellman: Call Mr. Mellerin. I was locked up.

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have an outdoor exercise policy before Stephens became Sheriff. This contention is not supported by any evidence in the record and is therefore meritless. Third, Spellman claims that the magistrate did not have all of his medical records before her at the time of her decision. He again fails to provide any possible grounds for disturbing the district court's finding that defendants had submitted all of the records in their possession.

III.

The district court's dismissal of Spellman's suit with prejudice is AFFIRMED.