

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-3534  
Conference Calendar

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DAVID W. GIBSON,

Plaintiff-Appellant,

versus

RICHARD PEABODY, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. CA 90 523 B M1  
- - - - -

March 18, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

David W. Gibson has filed an action under 42 U.S.C. § 1983 asserting that prison officials were deliberately indifferent to his serious medical needs. The district court granted defendants' motion for summary judgment and dismissed Gibson's action. This action was appropriate, as Gibson did not set forth specific facts showing a genuine issue as to a material fact. Fraire v. City of Arlington, 957 F.2d 1268, 1273 (5th Cir.), cert. denied, 113 S.Ct. 462 (1992).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The Supreme Court has held that allegations of wanton acts or omissions sufficiently harmful to evidence deliberate indifference to a prisoner's serious medical needs state a claim for relief under 42 U.S.C. § 1983. Wilson v. Seiter, \_\_\_ U.S. \_\_\_, 111 S.Ct. 2321, 2323, 115 L.Ed.2d 271 (1991). The facts underlying a claim of deliberate indifference must clearly evince the medical need in question and the alleged official dereliction. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985). Acts of negligence, neglect, or medical malpractice are not sufficient. Fielder v. Bosshard, 590 F.2d 105, 107 (5th Cir. 1979); see Estelle v. Gamble, 429 U.S. 97, 105-06, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

Gibson's own factual allegations show that he was regularly seen by prison doctors and was at least on one occasion referred to an outside orthopedist. That Dr. Ducote returned Gibson to limited duty status on Squad B was not indifference to a medical need because Dr. Ducote reviewed the order of the outside orthopedist and issued a duty status that was in his opinion appropriate for Gibson's physical condition. Gibson simply disagrees with Dr. Ducote's medical evaluation. Additionally, Gibson has not alleged that the medical staff was attempting to retaliate against him or punish him in any manner by placing him in a duty status which would cause him pain. Gibson's assertion that the duty status worsened his condition constitutes no more than a claim of negligence, neglect, or malpractice and does not allege the official dereliction necessary to support a claim of

deliberate indifference to a serious medical need under the guidelines set forth in Wilson and Gamble.

AFFIRMED.