

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3873
Conference Calendar

GLORIA DEAN WILLIAMS,

Plaintiff-Appellant,

versus

JOHNNIE W. JONES, JR.,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 92-CV-196-A
- - - - -

March 18, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Williams brought an action under 42 U.S.C. § 1983 seeking recovery for a back injury allegedly caused by the negligence of Warden Jones. Construed liberally, this claim is for a violation of the Eighth Amendment stemming from either cruel and unusual conditions of confinement or deliberate indifference to her medical needs. The district court did not abuse its discretion in dismissing the in forma pauperis suit as frivolous under 28 U.S.C. § 1915(d) because it lacks an arguable basis in either law

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

or fact. See Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992).

When conditions of confinement or denial of health care are at issue, the plaintiff's allegations must be of acts or omissions sufficiently harmful to evidence deliberate indifference to the prisoner's needs in order to state a claim for relief under 42 U.S.C. § 1983. Wilson v. Seiter, ___ U.S. ___, 111 S.Ct. 2321, 2326-27, 115 L.Ed.2d 271 (1991).

With respect to conditions of confinement, "the Eighth Amendment forbids deprivation of the basic elements of hygiene." Daigre 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). By her own account, Williams was placed in a cell that was leaking clean water from around the handle of the toilet. While the leaking condition lasted for several months, Williams acknowledges that a maintenance crew did come to her cell to correct the problem and that a corrections officer attempted to alleviate the problem on April 19, 1991. Williams has not alleged any facts to show that she was denied any "identifiable human need such as food, warmth, or exercise" by a leaking flush valve on the toilet in her cell. Wilson, 111 S.Ct. at 2327.

With respect to a claim of cruel and unusual punishment resulting from inadequate medical care, the facts alleged must clearly evince 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). In this case, Williams has not alleged that she was left to languish in her cell after she had fallen. She has stated that she was taken to the infirmary and examined by Dr. Gremillion. While she alleges that she is still in pain and would like to be treated at Charity Hospital, this amounts to no more than an assertion of negligence, neglect, or malpractice and is not sufficient to support a claim of deliberate indifference to her medical needs. Also, Williams has not alleged that the prison officials or Dr. Gremillion intended to unnecessarily and wantonly inflict pain on her.

AFFIRMED.