

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3939

Summary Calendar

HENRY L. WASHINGTON,

Plaintiff-Appellant,

versus

JOHN L. WHITLEY, Warden,
Louisiana State Penitentiary, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA-89-983-A-M2)

(December 29, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Louisiana prisoner Henry Washington appeals a judgment for the defendants in a section 1983 case he brought against several guards. We find no error by the district court and affirm.

Washington contests the trial court's findings of fact, which place the responsibility on Washington rather than the guards he sued for injuries he suffered in a 1989 cell transfer. Washington

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

contends that the defendants beat him without justification after he made protests about his treatment, while the guards contend that they used force to overcome Washington's resistance when they tried to enter his cell to end a disturbance Washington was making. Credibility determinations in the face of conflicting testimony are peculiarly within the province of the district court when it sits as trier of fact. Kendall v. Block, 821 F.2d 1142, 1146 (5th Cir. 1987). From our review of the record we find nothing clearly erroneous in the trial court's assessment of the evidence. See Johnston v. Lucas, 786 F.2d 1254, 1257 (5th Cir. 1986).

Washington also contests the legal standard employed by the district court in evaluating the guards' actions. While the original magistrate's report made reference to the "significant injury" requirement rejected by the Supreme Court in Hudson v. McMillian, 112 S.Ct. 995 (1992), its decision did not rely on that requirement. A supplemental opinion issued by the magistrate on February 19, 1992, reiterated that its decision relied on the distinction between "force . . . applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm" drawn in Whitley v. Albers, 475 U.S. 312 (1986). The magistrate correctly employed Whitley and the trial court did not err in adopting the magistrate's conclusions of law.

The remainder of Washington's arguments are meritless. The trial court did not abuse its discretion by deciding to not appoint counsel in this case, which was not complex and turned primarily on

issues of credibility. See generally Ulmer v. Chancellor, 691 F.2d 209, 212-13 (5th Cir. 1982). Nor did the magistrate abuse her discretion in her handling of Washington's discovery requests. See generally Richardson v. Henry, 902 F.2d 414, 417 (5th Cir. 1990), cert. denied, 498 U.S. 901 (1990), and cert. denied, 498 U.S. 1069 (1991). We will not entertain Washington's challenges to the prison's visitation policies as he did not make them before the district court. See United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990).

AFFIRMED