UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4019
Summary Calendar

ROI LE' SHILOH-BRYANT,

Plaintiff-Appellant,

versus

G. PACK, Lt. Michael
Unit, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Texas
(6:91CV184)

(February 17, 1993)

Before POLITZ, Chief Judge, KING and BARKSDALE, Circuit Judges.

POLITZ, Chief Judge:[*]

Roi Le' Shiloh-Bryant, proceeding *pro se* and *in forma pauperis*, appeals an adverse judgment in his civil rights action. Finding no error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Bryant, an inmate of the Texas Department of Criminal Justice, assaulted a fellow prisoner with a metal-tipped device while in the administrative segregation section of the Michael Unit. Shortly thereafter prison authorities placed Bryant on "metal restriction," removing possessions including a typewriter from his cell.[1] Bryant filed the instant lawsuit seeking the return of his belongings or, in the alternative, compensatory and punitive damages. He alleges that the defendants took his belongings without due process, that the seizures violated his first and fourth amendment rights, and that he was disciplined because of his race, in violation of the equal protection clause of the fourteenth amendment.[2]

Following a **Spears**[3] hearing before a magistrate judge, the district court ordered the defendants to answer Bryant's complaint. After the parties agreed to a bench trial before a magistrate judge, a hearing date was set and Bryant was ordered to submit a list of proposed witnesses. Bryant did not comply. Because of this failure, only one of Bryant's witnesses, coincidentally in the courthouse on an unrelated matter, testified at trial. Contrary to

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[1] In addition, the grand jury indicted Bryant for possession of a deadly weapon in a penal institution as a result of the incident.

[2] On appeal, Bryant challenges only the district court's judgment as to his equal protection claim. We therefore do not consider the judgment insofar as it disposed of the other claims.

[3] **Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985).

Bryant's trial testimony, mail logs from the Michael Unit did not reflect his mailing of witness lists. Considering that it had sufficient evidence before it upon which to reach a just resolution of the matter, and finding that Bryant proposed to introduce only cumulative testimony from additional witnesses, the district court granted the defendants' motion to close the evidence. The court entered judgment for the defendants and Bryant timely appealed.

Analysis

On appeal, Bryant raises four issues. He challenges: (1) the district court's denial of his motion for appointment of counsel; (2) its failure to furnish a copy of the record on appeal; (3) its decision to close the evidence before presentation of testimony by all of his proposed witnesses; and (4) its ruling that the defendants disciplined him as a result of his behavior rather than as a result of racial discrimination. None of these contentions has merit.

Bryant's claim that the district court erred in failing to appoint counsel requires only brief comment. As we have long held, indigent litigants enjoy no automatic right to appointment of counsel in actions under 42 U.S.C. § 1983.[4] District courts need not appoint counsel absent "exceptional circumstances" arising from the type and complexity of the case, and the abilities of the

[4] **Hulsey v. State**, 929 F.2d 168 (5th Cir. 1991); **Wright v. Dallas County Sheriff Dept.**, 660 F.2d 623 (5th Cir. 1982).

individual bringing it.[5] We review decisions in this regard only for abuse of discretion.[6] The absence of particularly complex issues in this case, and Bryant's demonstrated ability to present his claims to the court, make clear that the trial court did not abuse its discretion in denying the motion for appointment of counsel.

Bryant's claim that the failure to provide a copy of the trial transcript, records, and files for use in preparing his appeal "denied [him] access to the courts" similarly need not long detain us. The record does not reflect a request by Bryant, either to the district court or to this court, for copies of those materials. While access to trial transcripts and other record documents typically play an important role in an appeal, the failure to request those materials necessarily precludes the assertion of error because they were not produced.

Bryant asserts that the court improperly closed the evidence on the ground that he proposed to present only cumulative evidence.

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[5] **Branch v. Cole**, 686 F.2d 264 (5th Cir. 1982). In **Ulmer v. Chancellor**, 691 F.2d 209 (5th Cir. 1982), we identified as relevant to this inquiry (1) the type and complexity of the case; (2) whether the indigent is capable of adequately presenting his case; (3) whether the indigent is in a position to investigate adequately the case; and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination. The **Ulmer** panel also indicated that district courts should consider the degree to which appointment of counsel would assist in sharpening the issues, thereby shortening the trial and assisting in obtaining a just determination.

[6] **Jackson v. Dallas Police Dept.**, 811 F.2d 260 (5th Cir. 1986).

Under Fed.R.Evid. 403, the trial court may exclude relevant evidence where its probative value is substantially outweighed by . . . considerations of . . . needless presentation of cumulative evidence." Trial courts enjoy broad discretion to exclude evidence as cumulative.[7] The trial court admitted into evidence two affidavits signed by a total of 16 of Bryant's fellow inmates from the Michael Unit. Two of the three persons on Bryant's tardily-submitted witness list signed the affidavits, and the content of those affidavits essentially matches the testimony which Bryant proposed to adduce at a subsequent hearing. We conclude that the trial court did not abuse its discretion.

Bryant finally challenges the district court's conclusion that his assault on a fellow inmate rather than racial motivation triggered the disciplinary sanction. We may reject that finding of fact only if it is clearly erroneous.[8] Although Bryant adduced evidence tending to demonstrate that prison officials impose metal restriction with disproportionate frequency upon black inmates,

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[7] **Lirette v. Popich Bros. Water Transportation, Inc.**, 660 F.2d 142 (5th Cir. 1981); **Johnson v. William C. Ellis & Sons Iron Works, Inc.**, 604 F.2d 950 (5th Cir. 1979), modified on other grounds, 609 F.2d 820 (5th Cir. 1980).

[8] **Price v. Austin Independent School Dist.**, 945 F.2d 1307 (5th Cir. 1991) (district court determination as to existence of impermissible discriminatory motive is fact finding). Under the "clearly erroneous" standard, "[i]f the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." **Anderson v. City of Besemer City**, 470 U.S. 564, 573-74 (1985).

indicating racial bias, the record supports the court's finding that the assault on the fellow prisoner motivated the imposition of the metal restriction at issue. That finding of fact is not clearly erroneous. Absent a finding of improper discriminatory motive, the trial court correctly rejected Bryant's equal protection claim.[9]

AFFIRMED.

[9] **Village of Arlington Heights v. Metropolitan Housing Development Corp.**, 429 U.S. 252 (1977) (only intentional official racial discrimination violates equal protection).