

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4183
Conference Calendar

JAMES LEE GREEN,

Plaintiff-Appellant,

versus

W. SCOTT ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:91 cv 141
- - - - -
August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

James Lee Green, a prisoner in the Eastham Unit of the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID), filed an action under 42 U.S.C. § 1983 against Corrections Officer Tillman, TDCJ-ID Deputy Director W. Scott, Regional Director Kent Ramsey, and Warden R. Cooper. Green alleged that on March 18, 1991, Officer Tillman intentionally closed a cell door on his right shoulder. Green further alleged that Tillman not only closed the door on his shoulder, but also pushed the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

door closed and held it there while laughing at Green as he screamed in pain. Green alleged that Tillman stated that he hurt Green because "I just don't like your smart ass." Green was taken to the infirmary after the incident and the medical records show that Green had swelling, a small abrasion, tenderness and a poor range of motion. X-rays were taken, but Green did not have any broken bones.

The district court dismissed Green's suit with prejudice as frivolous under 28 U.S.C. § 1915(d) on February 10, 1992. The district court considered Green's claim under the standard of Huquet v. Barnett, 900 F.2d 838, 841 (5th Cir. 1990), and found that Green's injuries were not significant. On appeal, Green argues that the judgment of the district court should be vacated and the case remanded for trial based on the Supreme Court's subsequent holding in Hudson v. McMillan, ___ U.S. ___, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992).

In Hudson, the Supreme Court eliminated significant injury as a requirement for a violation of the Eighth Amendment "when prison officials maliciously and sadistically use force to cause harm." Id. at 1000; Tijerina v. Plentl, 984 F.2d 148, 151 n.6 (5th Cir. 1992). In overruling Huquet, the Hudson court held that it was not necessary to plead and prove a significant injury as a requirement for an Eighth Amendment violation in an excessive force case. Rather, the extent of the injury is one factor to be considered, together with a need for application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by responsible officials,

and any efforts made to temper the severity of a forceful response. Hudson, 112 S.Ct. at 999. Although the district court did note that "it appears [Green's] injury was not solely and directly the result of the incident since [Green] had been experiencing problems with his shoulder when he broke it at an earlier time[,]" the district court did not make a full inquiry into the factors listed by Hudson. Accordingly, the district court's judgment dismissing Green's claim is VACATED and REMANDED for consideration in light of Hudson.