

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 92-4233  
Summary Calendar

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AARON HOLMAN,

Plaintiff-Appellant,

Versus

UP REED, Doctor Eastham Unit  
TDCJ, et al,

Defendants-Appellees..

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Appeal from the United States District Court  
For the Eastern District of Texas  
(9:91CV175)

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( February 24, 1993 )

Before JOLLY, DUHE, and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

I

Aaron Holman, a prisoner in the custody of the State of Texas, filed a civil rights action against three prison physicians: Dr. Reed, Dr. Ford, and Dr. Adams. He alleged that prison officials

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<sup>1</sup> 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

ignored his serious medical condition and refused to classify him as "medically unassigned." The classification of medically unassigned would excuse him from work based on his medical condition. Holman sought declaratory relief and money damages in the amount of \$400,000.

The district court conducted an evidentiary hearing pursuant to Spears v. McCotter, 766 F.2d 179, 182 (5th Cir. 1985) and determined the following facts. Before going to prison, Holman underwent surgery to insert a plate in his head as a result of injuries from a motorcycle accident. Subsequently, he went to prison on two separate occasions; on both occasions he received a "line class three medical" status which exempted him from field work. When he returned to prison a third time for the present offense, he received an assignment to work in the fields. Although he complained about the assignment based on his medical history, he reported for work. On one occasion, upon returning from the fields at the end of the day, Holman fainted as he tried to disembark a transport trailer. The officer on duty called an ambulance, but medical personnel found nothing wrong with Holman.

The district court dismissed the complaint with prejudice as frivolous. On March 2, 1992, Holman filed a timely notice of appeal, a motion for extension of time to file a Rule 59 motion, and a motion to vacate or alter judgment. The district court concluded that the Rule 59 motion was untimely and that it lacked authority to extend the time for filing.

## II

Holman asserts that the district court erred in dismissing his

claim as frivolous. He contends that medical personnel were deliberately indifferent to his medical needs and ignored his medical history which indicated that he was unable to perform work in the fields. Implicitly, he argues that this conduct constitutes cruel and unusual punishment in violation of the Eighth Amendment.

A district court may dismiss an in forma pauperis (IFP) proceeding as frivolous under 28 U.S.C. § 1915(d) whenever it appears that the claim has no arguable basis in law or fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

"District courts are vested with especially broad discretion in making the determination of whether an IFP proceeding is frivolous." Green v. McKaskle, 788 F.2d 1116, 1119 (5th Cir. 1986).

"If prison officials knowingly put [Holman] on work detail which they knew would significantly aggravate his physical ailment such a decision would constitute deliberate indifference to serious medical needs," constituting a violation of his constitutional rights. Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989) (citation omitted).

Holman's medical records have an authentication affidavit and are undisputed. The medical records indicate that Holman was initially classified S2BT, a psychiatric designation indicating that he possibly suffered from post traumatic organic brain syndrome. Dr. Ford examined him approximately four months later and reclassified him a 1AP, no restrictions. A year later, Dr. Reed classified him as P3GP, noting the removal of part of his cranium and restricting his job assignment. Holman was assigned to

the garment factory where he would be out of the sun. The doctors prescribed medication; however, Holman stated that the medication was of little help for his back and his head, and he had difficulty getting it.

The prison doctors initially found no physical impairment which would preclude Holman from performing his work assignment. When he continued to complain, Dr. Reed reclassified Holman; and he no longer was required to work in the fields. It was reasonable for the doctors to rely on their own examination. Their conduct does not demonstrate a knowing indifference to Holman's ability to work without aggravating his condition. Even taking as true what Holman says in his brief, his allegations show no more than dissatisfaction with the doctors' diagnosis and prescribed medical treatment. This is insufficient to constitute a constitutional violation.

Nor did the prison doctors ignore Holman's serious medical needs, constituting unnecessary and wanton infliction of pain. The district court determined from the medical records that prison doctors had provided Holman with almost daily care and medication. Moreover, in his brief, Holman refers to the "repeated physical examinations, the head and chest x-rays . . . , his obvious scarring on his chest and neck, and his constant complaints." Because Holman has failed to allege a violation rising to the constitutional dimension of deliberate indifference to serious medical needs, his claim had no arguable basis in law and fact. The dismissal of Holman's claim was not an abuse of discretion.

Holman filed a notice of appeal, a motion to vacate or to alter judgment, and a motion to extend the time to file a Rule 59 motion. The district court denied the motions because they were not filed within ten days of entry of judgment. Holman contends that the district court abused its discretion in declining to extend the time for filing his Rule 59 motion for a new trial.

If the defendants have never been served, as in this case, a Rule 59 motion must be filed within 10 days after the date of entry of judgment. Craig v. Lynaugh, 846 F.2d 11, 13 (5th Cir. 1988), cert. denied, 490 U.S. 1093 (1989). Final judgment was entered on February 12, 1992, and Holman filed his post-judgment motion untimely on March 2, 1992. This Court "lack[s] equitable authority to forgive his noncompliance." Craig v. Lynaugh, 846 F.2d at 13. Had Holman filed his post-judgment motion within ten days of entry of judgment, the notice of appeal would have been nullified. Because the Rule 59 motion is untimely, Holman's timely notice of appeal is valid.

#### IV

Holman asserts that the district court erred in refusing to provide a transcript of the Spears hearing as part of the record on appeal. He argues that, without a transcript, he cannot determine which medical records were relied on by the district court or recall his testimony at the hearing.

It is not the practice of the district court to provide a transcript of Spears hearings without demonstrating a need for a transcript. The district court instructed Holman that a video tape of the proceedings would be provided upon a showing of good cause.

Holman made no attempt to demonstrate a need. Moreover, as part of the record, Holman had the benefit of the district court's memorandum opinion which included a thorough discussion of the testimony and medical information considered by the district court. This argument is without merit.

V

For the reasons set out above, the judgment of the district court dismissing Holman's complaint is

A F F I R M E D.