

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 92-4718  
Summary Calendar

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Emerson Clapper,  
Dawud Al-Faruq,

Plaintiffs-Appellants,

VERSUS

Sammy Merrell, Et Al.,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Eastern District of Texas

(6:91 CV 467)

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( March 19, 1993 )

Before THORNBERRY, DAVIS, and SMITH, Circuit Judges.

THORNBERRY, Circuit Judge\*:

Plaintiffs filed a Civil Rights Action pursuant to 42 U.S.C. § 1983, 1985(3) and 1986, and the district court dismissed their claims. We affirm the judgment of the district court.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

### Facts and Prior Proceedings

Emerson Clapper and Dawud Al-Faruq, a.k.a. David C. Johnson, Texas Department of Criminal Justice (TDCJ) inmates filed suit **pro se** pursuant to 42 U.S.C. §§ 1983, 1985(3), and 1986. The defendants were Houston Chronicle Publishing Company and reporter Kathy Fair; Correctional Employees Council, Inc. (CEC); Several TDCJ employees (auditor Ed Peterson, Warden Tommy Womack, Warden Janie Cockrell, Officer Sammy Merrell, and ten unknown employees); and Windham School District employees teaching at TDCJ (Principal Sylvia Clay, interior-finishing department head Ron Strominger, and vocational instructor Mike Stephenson). A **Spears**<sup>1</sup> hearing was conducted by a magistrate judge and Clapper and Al-Faruq testified at the hearing that there were three basic claims: (i) conspiracy to libel or slander Clapper through a TDCJ audit report, (ii) conspiracy to use both inmates in an effort to set up the firing of TDCJ employee, Marshall Herklotz, and (iii) conspiracy to deprive Clapper of his property. After the hearing, claims against Kathy Fair and the Houston Chronicle were dismissed. The prison employees then filed a motion for summary judgment, and the CEC filed a motion to dismiss. The magistrate judge recommended that the CEC's motion to dismiss as well as the TDCJ employees' and the Windham Hill District Employees' motion for summary judgment be granted because the inmates failed to state a civil rights violation. The Plaintiffs objected to the magistrate's report and recommendation. After a **de novo** review of the record, the district

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<sup>1</sup>**Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985).

court adopted the findings and conclusions of the magistrate and dismissed the Plaintiffs' cause of action with prejudice. Clapper and Al-Faruq appeal.

## **Discussion**

### **1. Conspiracy to Deprive Property**

Clapper and Al-Faruq claim a civil rights violation based on conspiracy to unconstitutionally deprive Clapper of his property. They allege that the tools which were confiscated as contraband were properly purchased by Clapper and the wardens knew this. In October 1991, Warden Womack gave Clapper the option of getting rid of the tools in question or having them destroyed. Clapper would not choose; he wanted all the tools or none of them. Three months later, Warden Womack had the tools destroyed. Clapper never filed a claim for reimbursement for the value of the tools pursuant to TDCJ procedures. "[A]n unauthorized intentional deprivation of property by a state employee does not constitute a violation of ...Due Process...if a meaningful postdeprivation remedy for the loss is available." **Hudson v. Palmer**, 468 U.S. 517, 533, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984). The burden is on the plaintiff to show that the state-law remedy is inadequate. **Marshall v. Norwood**, 741 F.2d 761, 764 (5th Cir. 1984). Clapper and Al-Faruq argue that the taking of Clapper's tools violated Due Process and that this is a cause of action under § 1983 because Texas does not provide an adequate remedy. On the contrary, a Texas inmate may recover up to \$500.00 for his property lost or damaged by state actors. Tex.

Gov't Code Ann. § 501.007 (West Supp. 1992). Clapper argues that this remedy is inadequate because the property in question is worth more than \$6,000.00. This is unpersuasive, however, because Texas law also provides for conversion actions. **In re Moody**, 899 F.2d 383, 385 (5th Cir. 1990). Clapper has therefore not shown that his state-law remedies are inadequate.

## **2. Other Alleged Conspiracies**

After comprehensive review of the record and close attention to the Appellants' additional claims of conspiracy, we conclude that they are without merit and decline to address them further.

## **Conclusion**

Accordingly, the judgment of the district court is affirmed.