

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-7326  
Summary Calendar

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TAFT RAINES MORGAN,

Plaintiff-Appellant,

VERSUS

JOHN FANCHER, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi

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June 22, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant, Taft Raines Morgan, appeals an adverse judgment on his § 1983 claim alleging excessive force and cruel and unusual punishment. The district court directed a verdict on the cruel and unusual punishment claim, and a jury found for the defendants on the excessive force claim. We affirm.

BACKGROUND

Morgan sued three Mississippi Department of Corrections prison guards alleging that they used excessive force and placed him in administrative segregation for 42 days.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Morgan testified that he had a seizure disorder which was triggered by temperature changes. On the day of the incident, the windows in Morgan's "zone" were open, and it was cold. Morgan went into the hall to advise a guard of his feelings of an impending seizure. Officer Fancher ordered Morgan to return to his zone. Fancher testified that Morgan was verbally abusive and refused to obey the order. Morgan acknowledged that the hall was a restricted area and that he did not immediately comply with Fancher's order.

After Morgan returned to his bedside, the defendants came into the zone with restraining gear. Fancher ordered Morgan to come into the hall. When Morgan failed to comply, Fancher came to Morgan's bedside and asked Morgan to turn around so that he could handcuff him. Morgan resisted and was sprayed with mace and beaten around the legs with a blackjack by the defendants. After he was subdued, Morgan was taken to the prison hospital and then to administrative segregation.

Officer Fancher promptly completed a rules violation report in which he charged Morgan with assault. He also requested that Morgan be removed from his unit because of the incident. After a hearing, the prison disciplinary committee concluded that Morgan did not assault Officer Fancher. Morgan remained in segregation for approximately 26 days after he was found not guilty by the disciplinary committee.

An official of the housing classification committee testified that he promptly requested that Morgan be returned to the general population. The request was denied because it did not have the

required signatures. The official also testified that Fancher had no authority to influence whether Morgan stayed in segregation.

At the close of Morgan's case-in-chief, the defendants moved for a dismissal of the case.<sup>2</sup> They argued that Morgan failed to establish that they used excessive force and that Officer Fancher was not responsible for Morgan's housing classification.

The district court denied the motion on the excessive force claim and granted it on the housing claim, concluding that Fancher did not cause Morgan's administrative segregation and that Morgan had no constitutional claim relating to his housing classification. The jury returned a verdict for the defendants on the excessive force claim. We affirm.

#### DISCUSSION

Morgan argues that although he did not have a due process liberty interest in his housing classification, the district court failed to recognize that he had an Eighth Amendment claim regarding his confinement in administrative segregation. He contends that his rights were violated when he was not timely released from segregation.

This Court reviews a district court's award of a judgment as a matter of law de novo, examining the entire record and all inferences in the light most favorable to the non-movant. Turner

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<sup>2</sup> During the 1991 revision of Fed. R. Crim. P. 50(a), the term "directed verdict" was replaced with the term "motion for a judgment as a matter of law." The replacement effects no change in the existing standard of review and a motion denominated as a motion for a directed verdict should be treated as a motion for a judgment as a matter of law. See Fed. R. Crim. P. 50(a), advisory committee's note.

v. Purina Mills, Inc., 989 F.2d 1419 (5th Cir. 1993).

Confinement in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards. Hutto v. Finney, 437 U.S. 678, 685 (1978). While punitive isolation is not unconstitutional per se, " . . . it may be, depending on the duration of the confinement and the conditions thereof." Id. at 685, 686. When it is claimed that a prison official has inflicted cruel and unusual punishment, the law mandates an inquiry into the official's state of mind. Wilson v. Seiter, \_\_\_ U.S. \_\_\_, 111 S. Ct. 2321, 2324 (1991). The prisoner must establish that the official acted with "deliberate indifference" to the conditions of his confinement. Id.

Morgan was not released due to a clerical error by prison officials. He has not established that the defendants acted with "deliberate indifference" to the conditions of his confinement. See Wilson, \_\_\_ U.S. \_\_\_, 111 S. Ct. at 2324. Thus, he has failed to establish a violation of the Eighth Amendment.

Morgan also argues that Fancher initiated the administrative segregation as a retaliatory punitive measure. He contends that Fancher "failed to determine the status of his request for confinement for assault; failed to prosecute his assault charge; failed to request that classification members remove him [Morgan] from confinement based upon the decision of the Disciplinary Committee; and in general expressed deliberate indifference to his decision to seek and maintain administrative segregation for Morgan."

A hearing was held within 72 hours after Fancher filed the rules violation report. After he filed that report Fancher had no further authority regarding Morgan's housing classification. Morgan's allegations regarding Fancher's failure to follow-up on his housing situation do not amount to cruel and unusual punishment. The district court properly determined that no reasonable juror could conclude that Fancher was responsible for Morgan's extended confinement in administrative segregation.

Morgan also argues that the district court erred by not according conclusive effect to the findings of the disciplinary committee that "it was Morgan and not Fancher who was assaulted." He argues that the doctrine of res judicata may be applied when there has been a prior proceeding involving an administrative agency acting in a judicial capacity. Morgan relies on Garner v. Giarrusso, 571 F.2d 1330, 1336 (5th Cir. 1978).

In Garner, a former police officer brought a civil rights action alleging racial discrimination. Id. at 1332. This Court stated that although res judicata may be applied when the prior proceeding was held before an administrative, rather than a judicial body, the findings of the Civil Service Commission were not entitled to conclusive effect. Id. at 1336. The Court reasoned that res judicata should not apply because the scope of the administrative hearing was much narrower than the civil rights suit and the Civil Service Commission was not a competent forum for the resolution of the federal claim. Id. at 1336.

Similarly, the scope of the disciplinary committee's hearing

was much narrower than the present suit. The committee did not find that Fancher assaulted Morgan as Morgan suggests. Further, the disciplinary committee is not a competent forum for the resolution of Morgan's claim.

Morgan also raises various arguments regarding the jury instructions. He first argues that the district court erred by not giving peremptory instructions declaring that Fancher's use of force violated the Eighth Amendment. As discussed previously, the disciplinary committee's findings were not entitled to conclusive effect; therefore, Morgan was not entitled to a peremptory instruction that Fancher's use of force was unnecessary.

Morgan also argues that the district court incorrectly instructed the jury regarding his state law claim of assault and battery. The court's instruction is a correct statement of the law of privilege as it relates to assault and battery in Mississippi. See Rogers v. Huber, 239 So.2d 333, 334 (Miss. 1970).

Finally, Morgan argues that the jury charge on the Eighth Amendment claim was "fundamentally inaccurate and misleading thereby warranting a new trial." He apparently argues that, under the jury charge given, excessive force may be employed without being violative of the Eighth Amendment. The charge given by the district court encompasses each of the factors which must be considered in determining whether the use of force was unnecessary and is correct. See Hudson v. McMillian, \_\_\_ U.S. \_\_\_, 112 S.Ct. 995, 999 (1992).

For the foregoing reasons, the judgment of district court is  
AFFIRMED.