

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7799
Conference Calendar

JOHN DELOACH,

Plaintiff-Appellant,

versus

CAPTAIN BYRON HOWELL ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. CA-H92-0109(P)(N)
- - - - -
(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

John Deloach challenges the magistrate judge's factual findings and credibility determinations, contending that the evidence at trial established that prison officials used excessive physical force against him and denied him adequate medical treatment.

This Court reviews factual findings under the "clearly erroneous" standard. Fed. R. Civ. P. 52; Johnston v. Lucas, 786 F.2d 1254, 1257 (5th Cir. 1986). A district court's findings of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

fact are not clearly erroneous if they are "plausible in light of the record viewed in its entirety[.]" Anderson v. City of Bessemer City, 470 U.S. 564, 573-74, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985). Moreover, credibility determinations are peculiarly within the province of the district court when it sits as the trier of fact. Kendall v. Block, 821 F.2d 1142, 1146 (5th Cir. 1987). This Court will declare testimony incredible as a matter of law only "when testimony is so unbelievable on its face that it defies physical laws." United States v. Casteneda, 951 F.2d 44, 48 (5th Cir. 1992) (internal quotation and citation omitted).

After reviewing the evidence and testimony presented by each side, the magistrate judge accepted the defendants' version of the facts over Deloach's uncorroborated version. The magistrate judge found that prison officers had used "reasonable and necessary" force to subdue Deloach after his unprovoked assault on Captain Howell. The magistrate judge also disbelieved Deloach's testimony that he was later attacked by prison officers in the infirmary. The magistrate judge further determined that Deloach's injuries "were minimal and were a direct consequence of his own actions." As the defendants' testimony did not defy physical laws and the record amply supports the magistrate judges's factual findings adopted by the district court, these findings are not clearly erroneous.

Finally, Deloach's motion to supplement the record with his "Proposal of Settlement" is DENIED.

AFFIRMED.