

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8164
Conference Calendar

JOSEPH UGWUNNA UDECHUKWU ET AL.,

Plaintiffs,

LYNDEN LOCKSLEY FRASER,

Plaintiff-Appellant,

versus

J. MICHAEL QUINLAN, Bureau of Prison
Director, ET AL.

Defendants-Appellees.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. P-91-CA-016
- - - - -
(October 29, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Joseph Udechukwu, Lynden Locksley Fraser, and Denver Swaby, federal inmates at Reeves County Law Enforcement Center (RCLEC),** filed a 42 U.S.C. § 1983 action against the director of the United States Bureau of Prisons (BOP) and various non-federal prison officials. Udechukwu and the others alleged that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

** RCLEC is a county institution run under contract by the Corrections Corporation of America (CCA) that houses federal prisoners.

prison officials violated their constitutional rights by allowing a female officer to videotape male officers strip searching them and about 17 other prisoners. Because Fraser was the only plaintiff to sign and be identified by name in the notice of appeal, it is effective only as to him. See Torres v. Oakland Scavenger Co., 487 U.S. 312, 314-15, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988); Smith v. White, 857 F.2d 1042, 1043 (5th Cir. 1988).

This Court construes prisoner's pro se § 1983 actions liberally. Wesson v. Oglesby, 910 F.2d 278, 279 (5th Cir. 1990). The district court purported to dismiss the plaintiffs' action for failure to state a claim under Rule 12(b)(6). The court in fact transformed the motion into one for summary judgment by considering materials outside of the pleadings. This the court could do because the defendants' motions were styled as motions for dismissal for failure to state a claim, or in the alternative motions for summary judgment.

Summary judgment is proper if the moving party establishes that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Letcher v. Turner, 968 F.2d 508, 509 (5th Cir. 1992); Fed. R. Civ. P. 56. This Court uses the same standards that the district court employed, views fact issues with deference to the nonmovant, and draws all inferences in favor of the party opposing the motion. Letcher, 968 F.2d at 509.

The presence of female guards during a strip search does not amount to a constitutional violation of a prisoner's privacy

rights. Letcher, 968 F.2d at 510. In Letcher this Court endorsed principles announced in other circuits that allow female guards to observe strip searches, monitor male prisoners in the shower, and conduct pat-down searches of male prisoners. The Court also cited with approval an unpublished opinion in this circuit holding that no constitutional violation occurs when female guards view naked male inmates if the presence of the female guards is necessary to protect a legitimate government interest such as maintaining security at a correctional facility. Id. (citation omitted). In Letcher female guards were present during strip searches that accompanied a lock-down after "a number of inmates threw their food trays, banged on their cell bars, and cursed the guards."

Because a disturbance within the cell block preceded the search it was constitutionally permissible. Although it was CCA's policy that strip searches were to be conducted by officers of the same sex as the prisoners except as necessary in emergencies, either all available male officers were needed to respond to the emergency or the female guard was the only one trained to operate the camera. Because neither CCA's policy nor its implementation of the policy during the challenged strip search was unconstitutional, the defendants are entitled to judgment as a matter of law. Fraser's argument that he was subjected to cruel and unusual punishment as a result of the search, raised for the first time on appeal, is without merit. Fraser's motion for appointment of counsel is moot. The district court's judgment is AFFIRMED.