

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1425
Summary Calendar

STEVEN THOMAS GOOD,

Plaintiff-Appellee,

VERSUS

JIM BOWLES, Sheriff of Dallas County,
Texas, sued in his individual
and official capacity,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:92-CV-0372-T)

(November 22, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Sheriff Jim Bowles challenges the denial of qualified immunity. We **REVERSE**.

I.

Steven Good filed this action under 42 U.S.C. § 1983, claiming violations of his civil rights under the Eighth and Fourteenth Amendments, and he included a supplemental state claim. Upon his probation being revoked, he had been sentenced to two years in the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Texas Department of Corrections (TDC). He asserted that he should have been credited with sufficient prior time served to be released on the day of sentencing; however, he was detained in the Dallas County Jail (which is under Sheriff Bowles' supervision) for 133 days. (The district court noted that "certain prisoners, including [Good], serve their sentence in the county jail despite the fact that they have been sentenced to state prison.")

Sheriff Bowles moved unsuccessfully for dismissal, or, in the alternative, summary judgment on the basis of qualified immunity.

The district court found a "conflict in the evidence as to exactly what the applicable [Sheriff's] policy was at the relevant time", and determined that there was evidence that the Dallas County jail "had a policy of not checking the sentence of a prisoner for time previously served if the prisoner was serving a Texas Department of Correction sentence." Accordingly, the district court stated that it was "of the opinion that this policy could conceivably give rise to the constitutional violation alleged by [Good]."

II.

A.

Good contests our jurisdiction, asserting that there are "disputed factual issues material to immunity". We disagree.

Although an order denying summary judgment on immunity is not appealable if material fact issues are in dispute, see *Feagley v. Waddill*, 868 F.2d 1437, 1439 (5th Cir. 1989), it is appealable "to the extent that it turns on an issue of law." *Id.* at 1439

(internal quotations and citations omitted). The record discloses that little evidence was before the district court when it made its ruling. Two affidavits were submitted: one by Sheriff Bowles, the other by John Weddle, the Sheriff's Department's legal adviser during the relevant time. The only other factual material before the court was Bowles' response to Good's request for admissions.

The district court found "a conflict in the evidence as to exactly what the applicable policy was at the relevant time", and noted that Good had adduced some evidence through Bowles' response to Good's request for admissions that Sheriff Bowles had "a policy of not checking the sentence of a prisoner for time previously served if the prisoner was serving a Texas Department of Correction sentence." This was consistent with the affidavit of Weddle, the Sheriff's Department's legal adviser, which provided that "[t]he Sheriff's Department does not monitor the sentences of T.D.C. prisoners because those sentences are monitored by the Texas Department of Corrections." Therefore, there is no dispute concerning the factual predicate for the district court's ruling. See **Salas v. Carpenter**, 980 F.2d 299, 304 (5th Cir. 1992) (examining assertion that there were disputed factual issues regarding immunity in order to ascertain jurisdiction).

The disposition of the summary judgment motion thus turned on whether the Sheriff should be cloaked with immunity for that policy decision, and we possess jurisdiction to evaluate the district court's "opinion that this policy could conceivably give rise to

the constitutional violation alleged by [Good]." See **Feagley**, 868 F.2d at 1439.

B.

We review *de novo* an order denying summary judgment based on qualified immunity, examining the record in the light most favorable to the non-movant. **Salas**, 980 F.2d at 304. In determining whether a public official is entitled to qualified immunity, we first ascertain whether the plaintiff has "alleg[ed] the violation of a clearly established constitutional right." **Siegert v. Gilley**, 111 S. Ct. 1789, 1793 (1991). If the plaintiff has, our second inquiry is into the objective reasonableness of the defendant's conduct. **Salas**, 980 F.2d at 305-06. In this case, as noted earlier, the two affidavits and Bowles' responses to Good's request for admissions constitute the only evidence we can evaluate in our inquiry.

"The objective reasonableness of allegedly illegal conduct is assessed in light of the legal rules clearly established at the time it was taken." **Id.** at 310. Put differently, qualified immunity will not be abrogated unless it is proven that the specific contours of a clearly established right were "sufficiently clear that a reasonable official would understand that *what he is doing* violates that right." **Feagley**, 868 F.2d at 1439 (internal quotation and citation omitted; emphasis in original); see also **Salas**, 980 F.2d at 310 (employing same language and noting that the official's "unlawfulness must be apparent") (internal quotation and citation omitted). We cannot conclude that Good has done so. See

Salas, 980 F.2d at 306 (plaintiff bears the burden of proving that the official violated clearly established constitutional rights).

The district court concluded that the policy of not monitoring TDC prisoners' time served status "could conceivably" violate the constitution. This alone suggests that the violation of a *clearly established* constitutional right for which Bowles should be held liable cannot be identified. Good's contentions are no more precise in identifying the specific contours of the alleged violation; he merely maintains that such a policy is the product of "deliberate indifference" because "it is obvious that the likely consequences will be deprivation of rights."

Although Sheriff Bowles' policy of not checking TDC prisoners' sentences may have contributed to Good's prolonged incarceration, the policy itself is not a repudiation of constitutional rights. It is *not* "obvious" that the likely consequence of this policy would be the deprivation of liberty, because no evidence was adduced that the TDC was *not* checking its prisoners' sentences. To the contrary, there was evidence that it did. Likewise, there is no evidence that error of the sort complained of had ever occurred before.

In sum, we cannot conclude that the failure to create a redundant system to check the status of TDC prisoners in the Dallas Jail constitutes a violation of clearly established constitutional rights. Sheriff Bowles is entitled to summary judgment based on qualified immunity.

III.

For the foregoing reasons, the order of the district court denying Sheriff Bowles summary judgment is **REVERSED**, and this matter is **REMANDED** to the district court.

REVERSED and **REMANDED**