

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1433
Conference Calendar

EARL JAMES DAVIS,

Plaintiff-Appellant,

versus

JIM BOWLES,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CV-0475-T
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

To recover damages under 28 U.S.C. § 1983, a plaintiff must show that he was deprived of a right secured by the Constitution or laws of the United States and that the persons depriving him of that right acted under color of state law. Daniel v. Ferguson, 839 F.2d 1124, 1128 (5th Cir. 1988). Such a complaint brought in forma pauperis may be dismissed as frivolous if it has no arguable basis in law or in fact. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). This

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Court reviews a dismissal under § 1915(d) for an abuse of discretion. Id. at 1734.

Prison officials violate the Eighth Amendment's proscription against cruel and unusual punishment when they demonstrate deliberate indifference to a prisoner's serious medical needs. Wilson v. Seiter, ___ U.S. ___, 111 S.Ct. 2321, 2323, 2326-27, 115 L.Ed.2d 271 (1991). The facts underlying a claim of deliberate indifference must clearly evince the medical need in question and the alleged official dereliction. The legal conclusion of deliberate indifference must rest on facts clearly evincing wanton actions on the part of the defendants. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985).

Earl James Davis, proceeding in forma pauperis, asserts that he contracted tuberculosis between February 22, 1992, and November 2, 1992, while incarcerated in Dallas County, Texas, after being convicted for delivering cocaine. He alleges that more than one inmate had tuberculosis while he was imprisoned at the Dallas County Jail. Davis, however, does not provide names; he merely provides the description of a "[w]hite male, age approximately 45 to early 50's, who weighed approximately 210 pounds." According to Davis, he learned in July 1992 that this fellow inmate, with whom he was imprisoned in the same tank, had tuberculosis. Davis, however, did not complain. Nevertheless, Davis asserts that "I believe" that Jim Bowles, the sheriff of Dallas County,

knowing of the severe overcrowding and the health problems this can cause, was deliberately indifferent to the need for

improved intake medical procedures to identify and isolate T.B. cases, or to identify and isolate them when they occurred. If procedures were in place then the Sheriff was deliberately indifferent to the need for improved training and supervision when the overcrowding problem occurred and one or more T.B. cases, in other inmates' cases, occurred and the Sheriff was then deliberately indifferent to the need for improved T.B. procedures in identification, isolation, treatment, which was the moving force behind Plaintiff contracting T.B.

Although it is unfortunate that Davis may have contracted tuberculosis, he has failed to allege facts evincing wanton actions on the part of Sheriff Bowles, alleging no more than a subjective belief of constitutional violations. Johnson v. Treen, 759 F.2d at 1238. The allegations are merely that Davis was incarcerated with a man with tuberculosis; that Davis did not complain about his confinement; and that Davis learned he was infected with tuberculosis on November 5, 1992. These facts do not remotely plead a constitutional violation. The district court, therefore, did not abuse its discretion in dismissing Davis's complaint under § 1915(d) because the complaint had no basis in law or fact.

AFFIRMED.