

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3008
Summary Calendar

ROGER MAYWEATHER,

Plaintiff-Appellant,

versus

CHARLES C. FOTI, JR., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(91-CV-3379-H(4))

(August 12, 1994)

Before POLITZ, Chief Judge, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

Roger Mayweather, a former pretrial detainee in the Orleans Parish House of Detention, appeals an adverse judgment in his *pro se* 42 U.S.C. § 1983 civil rights suit against Sheriff Charles Foti, HOD Warden Eddie Roberts, and Corporal Charles Jones. Mayweather complains that he was placed in a cell with a violent inmate. We

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

affirm.

Background

While awaiting trial on armed robbery charges Mayweather was placed in a cell with Stacy Fletcher, a prisoner of the Louisiana Department of Corrections serving time for an armed robbery conviction. Mayweather claims that Fletcher threatened him and attacked him with razor blades. Mayweather complains that he was forced to share a cell with Fletcher from the date of his incarceration on September 3, 1990 until his transfer to another cell on November 29, 1990. The record reflects that Mayweather was moved shortly after his first documented complaint against Fletcher. Mayweather contends, however, that he earlier had made repeated requests. The district court found that his testimony alleging constant abuse by Fletcher and claiming to have filed numerous complaints was not credible and that none of the defendants had responsibility for his placement. Mayweather's petition was dismissed with prejudice. He timely appealed.

Analysis

Mayweather's main contention on appeal misperceives what occurred in the trial court. He contends that several "genuine issues of material fact" should have precluded a summary judgment against him. There was no summary judgment; there was a trial. After hearing the evidence the magistrate judge recommended dismissal, finding that none of Mayweather's allegations -- that he was threatened and attacked, that he had filed numerous grievances with the defendants, and that the defendants failed to respond to

his complaints of danger -- was credible. The district court adopted those findings and conclusions as its own. Mayweather's contentions on appeal merely disagree with the court's findings; he does not meet the requirement of demonstrating that the trial court's findings were clearly erroneous.¹ On the basis of those findings, the dismissal was correct.²

Mayweather contends that he should not have been housed with a convicted inmate. The defendants offered a rational explanation -- severe space limitations.³ Further, Mayweather has not shown clear error in the trial court's finding that the defendants were not personally involved in the placement decision.⁴

Mayweather finally claims on appeal that he is entitled to relief because he arbitrarily was housed with other inmates even though he was injured. We do not consider this claim; it was not presented below.

AFFIRMED.

¹The district court's factfinding is presumed correct and will only be reversed for demonstrated clear error. Fed.R.Civ.P. 52(a).

²Because the court found Mayweather did not suffer a constant or pervasive threat of violence, he cannot recover. **Stokes v. Delcambre**, 710 F.2d 1120 (5th Cir. 1983).

³**Jones v. Diamond**, 636 F.2d 1364 (5th Cir.), cert. dismissed, 453 U.S. 950 (1981).

⁴**Thompson v. Steele**, 709 F.2d 381 (5th Cir.), cert. denied, 464 U.S. 897 (1983).