

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3097

Summary Calendar

FRANKLIN D. FRAZIER, JR.,

Plaintiff-Appellant,

versus

ED DAY, Warden, Washington
Correctional Institution,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-91-4618 K)

(March 16, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

I.

Franklin Frazier, a prisoner in a Louisiana correctional institution, filed a civil rights suit pursuant to 42 U.S.C. § 1983 against various prison officials. After Frazier broke his thumb in a fight with another inmate, he asserted that he was not treated

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

properly by the prison medical staff for this injury and was disciplined for refusing to work. A magistrate held a hearing pursuant to 28 U.S.C. § 636(b)(1)(B) and issued a report and recommendation that Frazier's complaint be dismissed with prejudice. The magistrate found that Frazier had not established any constitutional deprivation. Frazier filed no objection to this report. The district court adopted the report and dismissed Frazier's complaint with prejudice. Frazier appealed.

II.

Frazier challenges the district court's conclusion that he was not subjected to deliberate indifference to his serious medical needs. In order to prevail, Frazier must prove that the prison officials engaged in wanton acts or omissions sufficiently harmful to evidence deliberate indifference to his medical needs. Wilson v. Seiter, 111 S.Ct. 2321, 2323-27 (1991). Acts of negligence, neglect, or medical malpractice are not sufficient. Estelle v. Gamble, 429 U.S. 97, 105-06 (1976).

Frazier's testimony at the hearing shows that prison officials examined his hand and applied an ice pack to it following the fight. They placed Frazier in lock-down for fighting, but after his thumb became painful and swollen, they told him to submit a sick call request. Seven days later, Frazier says he went to the infirmary where Dr. Tran examined and x-rayed his hand. Dr. Tran noted a possible thumb fracture, placed a brace on his thumb, and referred him to an orthopedist, Dr. Doty. Dr. Doty diagnosed the

fracture two days later and put Frazier's thumb in a cast for six weeks.

After the cast was removed, Dr. Doty again x-rayed Frazier's hands and ordered him to light duty status for two more weeks. Following this period, Frazier was assigned to work in the fields, but he continued to complain about pain. Dr. Tran told him to report to work. Frazier did not report to work and was sent to disciplinary lock-down for four and one-half months. After one month of lock-down, Dr. Doty saw Frazier and referred him to Charity Hospital for a second opinion. Frazier was eventually referred to the orthopedic clinic at the Huey P. Long Medical Center where he was permanently restricted from using this right hand.

At the hearing, Frazier's counsel argued that this testimony demonstrated two acts of deliberate indifference: first, that there was a delay from July 29 to August 5 before Frazier was seen by a doctor for his broken thumb; and second, that Frazier was not treated with anti-inflammatory drugs following the removal of the cast.

In the first case, even taking all of Frazier's testimony as true, the undisputed record shows that he was given an ice pack for his thumb after the fight and was directed to file a sick call request as soon as he started complaining about pain in the thumb. Further, Dr. Tran immediately referred Frazier to Dr. Doty, the orthopedist. Nothing in this series of events demonstrates a wanton infliction of pain. With respect to the second argument,

following removal of the cast, Dr. Doty x-rayed Frazier's hand and placed him on limited duty for another two weeks. Frazier's complaints amount to no more than claims of negligence, neglect, or medical malpractice. He has not shown any deliberate or wanton action on the part of the defendants.

III.

There is no dispute that Frazier refused to work and was sentenced to disciplinary confinement for the refusal. Additionally, he does not argue that he was denied due process in the disciplinary procedure. Rather, Frazier simply argues that he should not have been disciplined because his thumb was injured and he was unable to work. "Prison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell v. Wolfish, 441 U.S. 520, 547 (1979). Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence indicating that the officials have exaggerated their response to these considerations, we ordinarily defer to their expert judgment in such matters.

Frazier had been treated for a broken thumb, the cast had been removed, x-rays had been taken, and he had been given an additional two weeks of light duty. Frazier does not argue and the record does not show that he was given dispensation from working; he simply declared himself a medical emergency. Frazier has produced

nothing to show that sentencing him to punitive lock-down was an exaggerated response to a prisoner refusing to work when prison medical staff had not declared him medically unfit to do so. Frazier has not established a constitutional deprivation.

AFFIRMED.