

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-3305

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RAY SAMPAY,

Plaintiff-Appellee,

VERSUS

RICHARD STALDER, Secretary, ET AL.,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
(CA-92-419-B-M1)

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(June 6, 1994)

Before WISDOM, DAVIS, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Defendant Warren Singleton appeals the denial of a summary judgment ruling that he is entitled to qualified immunity in a prisoner suit alleging that he knowingly allowed another inmate to throw human waste on the plaintiff. Our threshold inquiry in examining a claim of qualified immunity is whether the plaintiff has alleged a violation of a clearly established constitutional right. Siegert v. Gilley, 111 S.Ct. 1789, 1793 (1991). Because Plaintiff's allegations do not satisfy this first inquiry, we do

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

not reach the second inquiry, the objective reasonableness of the official's conduct. We reverse and remand for a dismissal of defendant Singleton.

Conditions of an inmate's confinement violate the Eighth Amendment only if they (1) rise to a level of a "serious" deprivation and (2) result from the official's "deliberate indifference." Wilson v. Seider, 111 S.Ct. 2321, 2324-27 (1991). Eighth Amendment claims thus contain both a subjective and an objective element: "courts considering a prisoner's claim must ask both if 'the officials act[ed] with a sufficiently culpable state of mind' and if the alleged wrongdoing was objectably 'harmful enough' to establish a constitutional violation." Hudson v. McMillian, 112 S.Ct. 995, 999 (1992) (quoting Wilson, 111 S.Ct. at 2326, 2329).

Under the objective component of an Eighth Amendment claim, the seriousness of the wrongdoing is to be judged by contemporary standards of decency. Hudson, 112 S.Ct. at 1000. To make out a condition-of-confinement claim, a deprivation must be "extreme." Id.

Rhodes v. Chapman, 452 U.S. 337, 348-49, 101 S.Ct. 2392, 2400 (1981), examined the question whether a deprivation was sufficiently serious to constitute an Eighth Amendment violation. Rhodes recognized that conditions of confinement violate the Constitution if they result in "unquestioned and serious deprivation of basic human needs." Id. at 347, 101 S.Ct. at 2399. The Supreme Court held that a condition which merely "inflicts

pain" is not an unconstitutional condition, because "the Constitution does not mandate comfortable prisons." Id. at 349, 101 S.Ct. at 2400. To amount to an Eighth Amendment violation, the condition must "either inflict[] unnecessary or wanton pain or [be] grossly disproportionate to the severity of crimes warranting imprisonment." Id. at 348, 101 S.Ct. at 2400.

This case involves no extreme or serious deprivation of basic human needs. We therefore hold that the facts fail to suggest a deprivation sufficiently grave to suggest a clear violation of the Eighth Amendment. As the complaint fails to allege a violation of a clearly established constitutional right, the motion for summary judgment on the basis of qualified immunity should be granted.

REVERSED and REMANDED.