

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3417  
Conference Calendar

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WILLIE WILLIAMS,

Plaintiff-Appellant,

versus

RICHARD L. STALDER, Secretary  
of Corrections, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. CA-92-742-A-M1  
- - - - -  
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

A complaint brought by a prisoner in forma pauperis may be dismissed as frivolous under 28 U.S.C. § 1915(d) if it has no arguable basis in law or in fact. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992). This Court reviews a dismissal under § 1915(d) for an abuse of discretion. Id. at 1734.

Prisoners have a right under the Eighth Amendment to be protected against injury at the hands of another inmate.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Johnston v. Lucas, 786 F.2d 1254, 1259 (5th Cir. 1986). In order to establish liability, the plaintiff must show that the state officials acted with conscious or callous indifference to the prisoner's right to be protected from another inmate. Johnston, 786 F.2d at 1259-60. A state official's negligent act, however, cannot rise to the level of a constitutional violation. Daniels v. Williams, 474 U.S. 327, 328, 106 S. Ct. 662, 88 L. Ed 2d 662 (1986).

During the Spears hearing, Willie Williams stated that he did not know Letel Harris, the inmate who attacked him, before the attack took place; that he had no prior run-ins with Harris; and that he still does not know why Harris attacked him. Nothing about Harris's conduct immediately before the attack would have put the officers on notice that Williams was in jeopardy. At worst, the prison guards were negligent by not restraining Harris. Williams, therefore, failed to present a claim with an arguable basis in law or fact.

Williams also alleges that he was denied proper medical care following the incident. 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. Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). The facts underlying a claim of deliberate indifference must clearly evince the medical need in question and the alleged official dereliction. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985). The legal

conclusion of deliberate indifference must rest on facts clearly evincing wanton actions on the part of the defendants. Id.

At the Spears hearing, Williams did not deny that he received substantial treatment after the stabbing, but he complained about a physician's failure to take several x-rays that had allegedly been scheduled. Williams further stated that he continues to experience pain in his shoulder and has noticed blood in his urine.

Williams's medical records were reviewed at the hearing. These records reflect that after the stabbing, Williams was transported to a hospital where he was treated for two days. Williams was also seen by medical personnel on several occasions between July and October 1992. On September 22, 1992, a physician made an objective finding that no medical intervention was needed.

None of the defendants was involved in Williams's medical care. In addition, there has been no deliberate indifference to Williams's serious medical needs. Williams's medical complaints were treated by medical personnel at the prison. The failure to conduct specific medical tests and procedures desired by Williams does not rise to the level of a constitutional violation.

The district court did not abuse its discretion in dismissing Williams's complaint under § 1915(d) because the complaint has no basis in law or fact. Accordingly, the judgment is AFFIRMED.