

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3816

LAYTON BANKSTON,

Plaintiff-Appellant,

VERSUS

RICHARD STALDER, Warden, Wade
Correctional Center, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana
(CA 93 3400 H)

(August 4, 1994)

Before REYNALDO G. GARZA, SMITH, and PARKER, Circuit Judges.

PER CURIAM:*

Layton Bankston, Jr., pro se and in forma pauperis, appeals the dismissal of his 42 U.S.C. § 1983 prisoner civil rights complaint alleging inadequate medical treatment as frivolous under 28 U.S.C. § 1915(d). We affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

Bankston, a Louisiana state prisoner, arrived at the Washington Correctional Institute in July 1993. Prison medical personnel examined Bankston after he complained of a skin disorder. After noting Bankston's mild sunburn, the medical personnel assigned Bankston to light duty in the shade for several months. After further complaints, prison medical authorities ordered Bankston's medical records from Baton Rouge. After the medical records arrived, prison authorities took Bankston to a doctor who examined him and prescribed medication on September 1. Because the prison pharmacy did not have the appropriate medication in stock, the medication had to be purchased at a commercial pharmacy in a nearby town to which prison officials made a trip once a week. Accordingly, there was a delay of approximately one week between Bankston's diagnosis on September 1 and his receipt of the prescribed medication on September 9.

II.

Bankston filed this suit alleging several wrongs))the cumulative thrust of which is that the prison officials were purposefully or deliberately indifferent to his medical needs. Based upon the complaint and the affidavits and records before it,¹

¹ The magistrate judge reviewed the record but did not conduct a Spears hearing or submit a Watson questionnaire to develop further the facts surrounding Bankston's allegations. See Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985); Watson v. Ault, 525 F.2d 886 (5th Cir. 1976).

the district court adopted the magistrate judge's recommendation and dismissed the action without prejudice as frivolous.

III.

We review a district court's § 1915(d) dismissal of a prisoner's § 1983 claim only for abuse of discretion. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993). Section 1915(d) "accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Neitzke v. Williams, 490 U.S. 319, 327 (1989). Accordingly, we must determine whether Bankston's allegations, if developed by a Spears hearing or Watson questionnaire, would have produced a colorable claim)the factual basis of which is not "fantastic" and the legal basis of which is, at least, "arguable." Eason v. Thaler, 14 F.3d 8, 9 n.5 (5th Cir. 1994). Bankston's claim plainly fails, as it lacks even an arguable basis in law.

In order to state a § 1983 cause of action for inadequate medical treatment, a prisoner must demonstrate that prison officials showed a "deliberate indifference to [his] serious illness or injury." Estelle v. Gamble, 429 U.S. 97, 105 (1976). Although the prison officials did not immediately provide the prescribed medicine to Bankston, they evaluated his medical condition on a timely basis, placed him on light duty for a

condition that obviously did not incapacitate him, and, when Bankston's complaints continued, obtained a physician's diagnosis and, within eight days, obtained the prescribed medication.² There is no arguable basis in law that these facts constitute "deliberate indifference" to Bankston's medical needs. See Graves v. Hampton, 1 F.3d 315, 319-20 (5th Cir. 1993).

For the reasons stated above, the judgment is AFFIRMED.

² We also note that the district court had before it the affidavits of two doctors who had reviewed Bankston's medical records)) one had also treated Bankston)) to the effect that Bankston's illness was not serious, and the prison medical personnel's treatment of Bankston was appropriate.