

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4100
Conference Calendar

VINCENT L. BAKER,

Plaintiff-Appellant,

versus

M.W. MOORE, Regional Director,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:91-CV-688

- - - - -
August 19, 1993

Before JOLLY, JONES, AND DUHÉ, Circuit Judges.

PER CURIAM:*

Vincent L. Baker appeals the dismissal of his action under 42 U.S.C. § 1983. Baker abandons his contentions against defendant M.W. Moore. We examine only his claims against defendant Michael Rosson.

A reviewing court will disturb a district court's dismissal of a pauper's complaint as frivolous only on finding an abuse of discretion. A district court may dismiss a pauper's complaint as frivolous "where it lacks an arguable basis either in law or in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

fact.'" Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992)(quoting Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)). "[A] court may dismiss a claim as factually frivolous only if the facts alleged are 'clearly baseless,' a category encompassing allegations that are 'fanciful,' 'fantastic,' and 'delusional[.]'" Id. at 1733 (internal citations omitted).

Baker first contends that "[t]he prison policy requires that whenever an employee feels that force is necessary[,] additional staff, a supervisor, and video equipment should be used when possible." That brief statement is the extent of Baker's contention regarding Rosson's alleged violation of prison policy. Baker has failed to preserve that contention for appeal. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

[W]henver prison officials stand accused of using excessive physical force . . . the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.

The Eighth Amendment's prohibition of "cruel and unusual" punishment necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind.

Hudson v. McMillian, 503 U.S. ___, 112 S.Ct. 995, 999-1000, 117 L.Ed.2d 156 (1992)(citations, quotations, and parentheses omitted).

Baker testified at the Spears hearing that he refused to obey Rosson's order to remove his arm from the food slot and that

Rosson twisted his arm while removing it from the slot.

According to Baker, his arm was sore for a week, but the pain was not severe. The district court did not err by finding that Baker failed to show that Rosson acted unreasonably in using force.

Finally, Baker alleges that prison officials have poisoned his food since December 1987. When asked at the Spears hearing for proof supporting his allegation, Baker said that he had none and that he could not prove the allegation. Baker's allegation is "clearly baseless." The district court did not abuse its discretion by dismissing his claim as frivolous.

APPEAL DISMISSED. See 5th Cir. R. 42.2.