

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4166  
Conference Calendar

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ROBERT G. MILLER,

Plaintiff-Appellant,

versus

SAMUEL RODRIGUEZ ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:92cv105  
- - - - -  
(March 25, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Robert Miller argues that the district court erred in dismissing his claim that he was subjected to the use of excessive force by prison guards. This Court reviews a district court's factual findings for clear error. Fed. R. Civ. P. 52(a). "If the district court's findings are plausible in light of the record viewed in its entirety, [the Court] must accept them, even though [it] might have weighed the evidence differently if [it] had been sitting as a trier of fact." Price v. Austin Indep.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

School Dist., 945 F.2d 1307, 1312 (5th Cir. 1991) (citations omitted). Great deference is given to a district court's determinations when they are based on credibility findings. Id. The Court "must apply the clear error standard with particular care in cases involving demeanor testimony." Id. (citations omitted). The district court's legal conclusions are reviewed de novo. Id.

In making its determination of the excessive-force claim, the district court properly relied on the standard stated in Hudson v. McMillian, \_\_\_U.S.\_\_\_, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992). See Bender v. Brumley, 1 F.3d 271, 277-79 (5th Cir. 1993). Under Hudson, the proper inquiry is "whether force was applied in a good-faith effort to maintain or restore discipline or maliciously and sadistically to cause harm." 112 S.Ct. at 998 (internal quotation and citation omitted). Hudson held that in determining whether the use of force was wanton or unnecessary, consideration may be given to "the need for application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of forceful response." Id. at 999 (internal quotation and citation omitted). The absence of serious injury is relevant, but is not dispositive of the excessive force claim. Id.

Miller and inmate David Wade testified that, as Miller was returning from the shower to his cell, Officer James began calling Miller names and then hit Miller three times in the face.

Miller testified that Officer Taylor then grabbed Miller around the waist while James continued to hit him. Miller stated that

the officers dragged Miller into his cell. Miller testified that Officers Rodriguez and Partin also entered into the cell and that all of the guards began beating Miller.

Officer James testified that Miller refused to obey an order to return to his cell and that Miller then struck him. Officer Taylor confirmed that Miller struck James and that the two officers were unable to restrain Miller. Rodriguez and Partin testified that James and Taylor required their assistance to handcuff Miller. Rodriguez and Partin denied striking Miller at any time.

The district court found that Miller had refused to obey orders to return to his cell and that he struck Officer James. The district court further found that James' response of striking back and attempting to subdue Miller was appropriate under the circumstances. The district court concluded that the action was taken with the intent to restore control, discipline, and security after Miller refused to obey an order. The district court also found that the action of the other guards in attempting to subdue Miller was reasonable because of Miller's continued resistance. The district court categorized Miller's injuries as minor and determined that they did not involve the wanton infliction of pain.

The district court found the testimony of the defense witnesses to be more credible than the testimony of Miller and Wade. The district court's credibility findings are entitled to great deference and are plausible in light of the evidence presented by the defense witnesses at trial. Price, 945 F.2d at

1312. Based on Hudson and the district court's credibility findings, which are not clearly erroneous, Miller failed to establish the occurrence of a constitutional violation.

AFFIRMED.