UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5042
Summary Calendar

VANCE DILLON,

Plaintiff-Appellant,

versus

J. SESSIONS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(9:91-CV-57)

(April 4, 1994)

Before POLITZ, Chief Judge, GARWOOD and BARKSDALE, Circuit Judges.

PER CURIAM:*

Assaulted by fellow inmates, Vance Dillon invoked 42 U.S.C. § 1983 claiming that the attack was encouraged, or at least not prevented, by prison officials. After a **Spears** hearing the action was dismissed as frivolous under 28 U.S.C. § 1915(d). Dillon timely appeals urging procedural errors.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Dillon claims inadequate notice because he was not informed of his right to cross-examine defense witnesses at the **Spears** hearing. He also contends that the court did not *sua sponte* provide him with all relevant prison documents or defense witness statements. Dillon did not timely object and he offers neither argument nor authority for the claimed entitlement to notice about cross-examination and to court-initiated discovery. These novel allegations of error lack merit.

Dillon next complains that the defendants were allowed to be present during the hearing but that his witnesses were returned to custody after testifying. While it is not clear from the record whether the sequestration rule was invoked, as parties the defendants were entitled to remain at the hearing.[1] Dillon's witnesses, on the other hand, were not parties and were present only under writs of *habeas corpus ad testificandum* ordering them returned to custody "after having so testified." There was no error committed.

Dillon asserts a due process violation because the magistrate judge refused to allow the recall of a witness. Dillon conceded that he was recalling the witness only to repeat part of his testimony. It was within the magistrate judge's sound discretion to exclude repetitive testimony.[2] We find no abuse of that discretion.

Dillon maintains that the court *a` quo* erred in denying his

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[1]Fed.R.Evid. 615.

[2]Fed.R.Evid. 611(a).

motion for sanctions in which he claimed that he did not receive several defense motions even though he had supplied the defendants with his current address. Assuming this to be the case, Dillon experienced no demonstrable prejudice from the misrouting of these motions. We must note the record reveals that Dillon did not inform the defendants of his change of address until the January 7, 1993 hearing; the motions at issue were mailed two days before. No sanctions were warranted.

Finally, Dillon moves for a free transcript of the hearing. Free transcripts are provided only when a party raises a substantial question on appeal and demonstrates a particular need for the transcript.[3] Dillon has done neither. The motion is DENIED.

The judgment of the district court is in all respects AFFIRMED.

[3]28 U.S.C. § 753(f); **Harvey v. Andrist**, 754 F.2d 569 (5th Cir.), cert. denied, 471 U.S. 1126 (1985).