

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5510
Conference Calendar

LAWRENCE EDWARD THOMPSON,

Plaintiff-Appellant,

versus

CHARLES E. ALEXANDER ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:92-CV-173

- - - - -
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Lawrence Edward Thompson contends that prison officials were deliberately indifferent to his serious medical needs because they did not treat him properly for his injured foot and assigned him to a job that was beyond his medical capabilities. Thompson asserts that he could not wear steel-toed boots of any size because of a scar from prior foot surgery. Steel-toed boots are necessary to work in the fields. Thompson conceded that he was seen by several medical officers and that none of them would change his classification so that he would not be able to wear

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

steel-toed boots and perform the work associated with them. Thompson's allegations show no more than a disagreement with the doctors' evaluation of his foot condition. Thompson's allegations do not suggest that the refusal to place a boot restriction on him was a wanton action that the doctors knew or should have known caused a substantial risk to his health. See Farmer v. Brennan, ___ U.S. ___ 114 S. Ct. 1970, 1981, ___ L. Ed. 2d ___ (1994) (failure-to-protect case). Thompson did not allege that the officials engaged in wanton acts or omissions sufficiently harmful to evidence deliberate indifference to his serious medical need with respect to the treatment he received for his foot or the work assignments he received that required the wearing of steel-toed boots. Wilson v. Seiter, 501 U.S. 294, 296-305, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991).

Thompson argues that he was found guilty at a disciplinary hearing, given 30 days of special cell restriction, and property restriction without due process of law. The standard of due process for prison disciplinary procedures depends on the sanction imposed on the prisoner and the resulting consequences. A prisoner punished by solitary confinement and loss of good-time credits must receive: (1) written notice of the charges against him at least 24 hours before the hearing; (2) a written statement of the factfinders as to the evidence relied on and the reasons for the disciplinary action taken; and (3) the opportunity to call witnesses and present documentary evidence in his defense, unless these procedures would create a security risk in the particular case. Wolff v. McDonnell, 418 U.S. 539, 563-66, 94 S.

Ct. 2963, 41 L. Ed. 2d 935 (1974). In contrast, a mere few days administrative segregation, having no effect on parole, requires only an informal nonadversary evidentiary review, provided the prisoner receives notice and has an opportunity to present a statement. Hewitt v. Helms, 459 U.S. 460, 476-77, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983). Although the district court cited the Wolff standard, the Hewitt standard is the proper one to apply because of the minimal punishment Thompson received.

The record of the disciplinary hearing showed that Thompson's substitute counsel was present at the hearing and that Thompson had refused to attend the hearing. Thompson asserted that the substitute counsel did not follow the custom of the Eastham Unit to bring him to the hearing. Hewitt does not require a personal escort on the day of the hearing, but requires simply that a prisoner get notice of the charges against him. Thompson conceded that he had been given five days notice of the charges against him by his substitute counsel, Donna Moore.

Thompson contends that Health Administrator Loren Brewer changed his medical records on June 28, 1989. Thompson asserts that the district court dismissed this claim as time-barred under the Texas statute of limitations without giving him the opportunity to show that he was not aware of the alleged injury until later. This argument has no merit because the district court did not find that the claim was time-barred. The district court had previously ordered that Thompson could present claims only for events occurring on or after April 7, 1992, in this suit. This order was based on a finding that the incidents

occurring prior to that date were the subject of other federal lawsuits. Id. Thompson does not challenge this finding.

Thompson has not shown that the district court abused its discretion by dismissing his claims as frivolous under 28 U.S.C. § 1915(d). Denton v. Hernandez, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992); Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

Thompson's motion to proceed in forma pauperis on appeal of the dismissal of his civil rights suit is DENIED because the appeal does not present a nonfrivolous legal issue. Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986).

The appeal, which is frivolous, is DISMISSED. 5th Cir. R. 42.2.