

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 93-5542  
Summary Calendar

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WILLIAM ROBERT PARKER,

Plaintiff-Appellant,

VERSUS

J.M. SMITH, Sheriff, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas

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(6:93-CV-321)

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(May 6, 1994)

Before THORNBERRY, DAVIS and SMITH, Circuit Judges.

THORNBERRY, Circuit Judge:\*

**Facts and Prior Proceedings**

William Robert Parker, proceeding pro se and in forma pauperis (IFP), is currently incarcerated in the Diagnostic Unit of the Texas Department of Corrections in Huntsville, Texas. He filed the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

instant civil rights action alleging that while incarcerated in the Smith County jail, he was deprived of adequate medical care and subjected to unconstitutional conditions of confinement. Specifically, Parker alleged that he was forced to sleep on a floor with no mattress for five days when he first arrived at the Smith County jail, despite the fact that he informed prison medical personnel that he suffered from four pinched nerves and two ruptured discs in his back. He also complained that he was not allowed to visit his doctor in Houston even though his private insurance carrier was prepared to pay for the costs of transporting Parker to and from Houston. In addition, Parker claimed that the ventilation system in the jail failed to provide adequate heat in the winter and cool air in the summer.

The magistrate judge held a Spears hearing, after which he recommended dismissing Parker's action as frivolous under 28 U.S.C. § 1915(d). Parker objected, but the district court overruled the objections and adopted the magistrate judge's report and recommendation. Parker's complaint was dismissed as frivolous. He timely appeals to this Court for relief.

#### **Discussion**

A district court may dismiss an IFP complaint as frivolous under § 1915(d) if it lacks an arguable basis in law or fact. **Eason v. Thaler**, 14 F.3d 8, 9 (5th Cir. 1994). We review such dismissals for abuse of discretion. **Id.** Because Parker was in jail as a result of parole revocation, his claims regarding his treatment while in the Smith County jail were properly analyzed by

the district court under an Eighth Amendment standard.<sup>1</sup> **See Rankin v. Klevenhagen**, 5 F.3d 103, 106 (5th Cir. 1993).

Under the Eighth Amendment, a prisoner's claims relevant to medical needs are subject to a deliberate indifference standard. **Estelle v. Gamble**, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed. 2d 251 (1976). Applying this standard to the facts before, we conclude that Parker's claim concerning the failure of prison officials to promptly give him a mattress does not rise to the level of a constitutional violation. The following facts support our decision.

During the Spears hearing, Parker testified that he injured his back on the job in June 1992 and received treatment for that injury. For the next eight months, Parker saw a doctor at least once a month, but contended that the most effective treatment for his injury was sleeping on a water bed and using a hot tub. While his doctor recommended surgery as a remedial measure, Parker never chose to have surgery. On February 26, 1993, Parker was incarcerated because his parole was revoked. He was taken to the Smith County jail and was made to sleep on the floor without a mattress between five and seven days. During that time period, he saw the nurses and doctor employed by the jail and told them of his

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<sup>1</sup> Parker contends that the district court erroneously applied an Eighth Amendment standard to his claims, rather than a Fourth Amendment standard, because he was a pretrial detainee and not a convicted prisoner during the time when the alleged constitutional violations occurred. He is incorrect. Parker testified during the Spears hearing that his parole was revoked, and he was being held in jail under a 1980 conviction. He is thus a convicted prisoner and his treatment claims are subject to Eighth Amendment analysis. **Rankin**, 5 F.3d at 106 (5th Cir. 1993).

back problem, but he was not given a mattress until several days after his complaints. He then spent about one month sleeping on the floor with a mattress. Parker admitted that during his incarceration in the Smith County jail, he was taken to see his own doctor in Tyler, as well as several specialists in Tyler, although he was not allowed to chose the specialists.

Defendant Smith County disputed Parker's allegations and submitted records kept on Parker while he was in the jail. Smith County's counsel told the court that the records would show that Parker was screened in by the medical staff on the day that he came into the jail; that he was given a mattress the following day after he came into the jail; he was taken to see his private physician and other medical providers several times during his stay; and he was never denied medical care.

We have reviewed the entire record in this case and find that the facts do not demonstrate a deliberate indifference to Parker's medical needs, thus the district court did not abuse its discretion.

Likewise, the district court did not abuse its discretion by dismissing Parker's ventilation claim under § 1915(d). Parker's claim that the ventilation system in the Smith County jail is inadequate is frivolous. This claim, without more, does not establish a violation of Parker's Eighth Amendment rights. **See Rhodes v. Chapman**, 452 U.S. 337, 347-48, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981)(conditions of confinement which do not lead to a deprivation of essential food, medical care, or sanitation do not

amount to an Eighth Amendment violation); **see also Wilson v. Seiter**, 501 U.S. 294, 111 S.Ct. 2321, 2327, 115 L.Ed.2d 271 (1991)(some conditions of confinement in combination may violate Eighth Amendment).

We also find no error concerning the dismissal of Parker's claim that the prison officials refused to take him to Houston to see a doctor for a second opinion about his back injury. **See Wilson**, 111 S.Ct. at 2326-27. Prison officials violate the Eighth Amendment when their actions manifest a deliberate indifference to a prisoner's serious medical needs, constituting a wanton infliction of pain. **Id.** Refusing to transport Parker over 200 miles away to Houston for a second opinion from the doctor of his choice does not constitute such wantonness, especially in light of the fact that Parker was taken to several different doctors located closer to the prison.

#### **Conclusion**

Based on the foregoing, we affirm the judgment of the district court.

AFFIRMED.