IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7084
Conference Calendar

WILLIE CHARLES HICKS,

Plaintiff-Appellant,

versus

DR. JON SHARP, A. LOPEZ,
and J. HART,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. G-92-CV-488
- - - - - - - - - - -
May 7, 1993

Before REAVLEY, KING, and DAVIS, Circuit Judges.

PER CURIAM:*

Willie Charles Hicks filed a civil rights action pursuant to 42 U.S.C. § 1983 against Dr. Jon Sharp and Nurse J. Hart, prison medical personnel, and A. Lopez, the mailroom supervisor. Hicks has not alleged that prison medical personnel ignored or were deliberately indifferent to his medical needs, constituting unnecessary and wanton infliction of pain. See Estelle v. Gamble, 429 U.S. 97, 104-06, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). The gravamen of his complaint was that he suffered discomfort

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

from the side effects caused by the medication prescribed by Dr. Sharp, but he received treatment to correct his reaction to the medication. In order to state an Eighth Amendment claim, it is not enough that he was dissatisfied with the medical treatment he received from Dr. Sharp or that he alleged mere negligence. Spears v. McCotter, 766 F.2d 179, 181 (5th Cir. 1985); Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

For the first time on appeal, Hicks asserts additional factual issues regarding his medical treatment. We will not consider issues that have not been presented in the district court unless "they involve purely legal questions and failure to consider them would result in manifest injustice." See Varnado, 920 F.2d at 321 (internal quotations and citation omitted).

Hicks contends that the district court erred in neglecting to notice his request for a jury trial and in not affording him an opportunity to enlarge his complaint either in a motion for a more definite statement or a Spears hearing. He argues that, if the district court had inquired further, it would have been satisfied that he had been subjected to serious medical risks and would have ordered a jury trial.

To develop the facts of a pro se, in forma pauperis complaint, district courts may direct magistrate judges to hold a Spears hearing to determine if a claim is frivolous. Green v. McKaskle, 788 F.2d 1116, 1119 (5th Cir. 1986). As discussed above, the district court was able to determine that Hicks could not support a claim for an Eighth Amendment violation in the medical sense on the complaint alone. See Green, 788 F.2d at

1120. Accordingly, a Spears hearing and a trial by jury were not required, and there was no error.

Hicks asserts that Lopez refused to forward his mail to inform his family of his medical condition. He argues that Lopez' actions amounted to a conspiracy with Dr. Sharp and Nurse Hart to deprive him of medical treatment. Moreover, he contends that Lopez' superiors approved of Lopez' practice of reading the letters and refusing to forward them.

Hicks named Lopez as a defendant in his complaint, but he presented no facts in support of his allegations against Lopez in the district court. Because Hicks's complaint did not contain sufficient factual support to maintain a constitutional claim against Dr. Sharp and Nurse Hart for deprivation of medical treatment, it was not necessary for the district court to afford him an opportunity to amend his complaint as to Lopez. See Jacquez v. Procunier, 801 F.2d 789, 792-93 (5th Cir. 1986). We decline to address his additional factual allegations for the first time on appeal. See Varnado, 920 F.2d at 321.

Accordingly, Hicks's claim has no arguable basis in law and fact. The district court did not abuse its discretion in dismissing the claim as frivolous. See Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

AFFIRMED.