

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7195  
Summary Calendar

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EDWARD CORNELIUS CHARLES,  
Plaintiff-Appellant,  
VERSUS  
JOE MAX TAYLOR, et al.,  
Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA G 92 412)

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August 25, 1993

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Joe Taylor appeals the district court's dismissal, pursuant to 28 U.S.C. § 1915(d), of his state prisoner's civil rights suit brought under the authority of 42 U.S.C. § 1983. Concluding that further factual development is needed, we vacate and remand.

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\* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Charles complains of the conditions of confinement in the Galveston County Jail, naming as defendants the Sheriff, Joe Taylor, and two employees of the sheriff's department, Major Eric Nevelow and Captain R. Carter. Charles alleges that, after another inmate plugged a toilet with a towel, his entire cell block was placed on "lockdown" status, although Charles had not committed any infraction. While he was on lockdown status, Charles's privileges were suspended. He was in a six-man cell with five other inmates. He states that the defendants ordered the water supply to be turned off, so toilets did not operate, and human waste accumulated to the rim of each toilet. He asserts that these conditions persisted for several days.

The magistrate judge directed interrogatories to Charles, in the answers to which he stated that he suffered from constipation because he was unwilling to use the unsanitary toilets and became dehydrated from lack of water. He says that jail officials ignored his request for medical treatment. Although they are not part of the record on appeal, the district court stated that Charles attached to his interrogatory responses copies of grievances he had filed, protesting the jail conditions, and copies of jail officials' responses reflecting that water had been turned on periodically to allow the toilets to be flushed.

II.

Charles was requested, but was not given, a Spears hearing.

See Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). Such a hearing is needed to determine, first, whether Charles was a pre-trial detainee or a convicted jail inmate at the time of the incident )) a matter about which the district court expressed uncertainty. Second, a Spears hearing will allow a more detailed explication of the facts, such as whether Charles was deprived of liquids for forty-eight hours.

On the basis of facts developed at a Spears hearing, the district court can evaluate again whether this matter is appropriate for dismissal under § 1915(d), a question on which we express no view at this time. The judgment is VACATED, and this matter is REMANDED for further proceedings.