

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7316
Conference Calendar

KEVIN DEWAYNE GRANT,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director
Texas Department of Criminal
Justice, Institutional Division,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-G-92-257
- - - - -

August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

A complaint filed in forma pauperis can be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint "is frivolous where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(1989)). This court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S.Ct. at 1734.

The Eighth Amendment's prohibition against "cruel and unusual punishment" protects Grant from improper medical care only if the care is "sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Thus, "[m]ere negligence, neglect or medical malpractice" does not give rise to a 42 U.S.C. § 1983 cause of action. Fielder v. Bosshard, 590 F.2d 105, 107 (5th Cir. 1979).

Grant's allegation that following the extraction of his wisdom tooth, medical personnel neglected to remove his stitches, does not amount to deliberate indifference to his serious medical needs. Although Grant was given the opportunity to explain in detail the harm which resulted from the alleged neglect, he failed to assert a sufficiently concrete injury to constitute a valid § 1983 claim. See Mendoza v. Lynaugh, 989 F.2d 191, 193-95 (5th Cir. 1993). Because Grant failed to establish any resulting substantial harm occasioned by the alleged neglect, his claim has no arguable legal basis, and the court did not abuse its discretion when it dismissed his action as frivolous. See id. at 195. Thus, the district court's dismissal under § 1915(d) is AFFIRMED.

Finally, Grant's "motion for relief" is DENIED as moot.