IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7389
Conference Calendar

JAMES CARTER,

Plaintiff-Appellant,

versus

KEITH PRICE,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-G-90-7

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(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

James Carter appeals the dismissal of his civil rights complaint as frivolous pursuant to 28 U.S.C. § 1915(d). An in forma pauperis complaint may be dismissed as frivolous pursuant to § 1915(d) if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993); see Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). Section 1915(d) dismissals are reviewed for abuse of discretion. Id. at 1734.

Prison officials violate the constitutional proscription against cruel and unusual punishment when they demonstrate

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

deliberate indifference to a prisoner's serious medical needs, constituting an unnecessary and wanton infliction of pain. Wilson v. Seiter, 501 U.S. 294, 111 S. Ct. 2321, 2323, 2326-27, 115 L. Ed. 2d 271 (1991). The facts underlying a claim of deliberate indifference must clearly evince the medical need in question and the alleged official dereliction. The legal conclusion of deliberate indifference must rest on facts clearly evincing wanton actions on the part of the defendants. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985).

"[P]rison work requirements which compel inmates to perform physical labor which is beyond their strength, endangers their lives, or causes undue pain constitutes cruel and unusual punishment." Howard v. King, 707 F.2d 215, 219 (5th Cir. 1983). Work which is not cruel and unusual per se may also violate the Eighth Amendment if prison officials are aware that it will "significantly aggravate" a prisoner's serious medical condition. Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989). A negligent assignment to work that is beyond the prisoner's physical abilities, however, is not unconstitutional. Id.

The district court held a Spears hearing. See Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). At the hearing, a prison physician testified from Carter's medical records that Carter suffers from medical conditions which require that he be limited to light work assignments. Carter testified that he was assigned to "C Force" and that, while on that work detail, he was required to perform work assignments which were inappropriate to his medical classification. When his medical condition worsened, he

missed work on four occasions and was disciplined. A prison official testified that C Force is a medical squad with restricted responsibilities. There are frequent rest periods and lifting restrictions. Typical work assignments include weeding of flower beds and garden work. Medical restrictions of individual inmates are accommodated. Carter testified, however, that the C Force was required to do heavier work such as digging up pipes with picks and shovels and busting rocks.

Carter testified that he submitted an I-60 form to Warden Price, complaining of his work assignment. Price responded that Carter's work assignment was appropriate. A document filed by Carter in support of his complaint reflects that the warden investigated the grievance and concluded that Carter should not have been assigned to perform field work. Although Carter had failed to attempt to resolve the matter informally, he had already been reassigned to light duty in the kitchen. Accordingly, the grievance had been resolved.

Carter has failed to allege any facts from which it could be concluded that Warden Price was deliberately indifferent to Carter's condition. Supervisory officials are not liable under § 1983 for the actions of subordinates under any theory of vicarious liability. Thompkins v. Belt, 828 F.2d 298, 303 (5th Cir. 1987). A supervisor may be liable for an employee's acts if the civil rights plaintiff shows that the supervisor was (1) personally involved in the alleged constitutional deprivation, or (2) demonstrates "a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation."

Id. at 304. Warden Price is the only person named as a defendant and Carter cannot show that Price was personally involved in any constitutional deprivation or that Price's conduct was wrongful. Carter's action had no arguable basis in law or in fact and was properly dismissed as frivolous pursuant to 28 U.S.C. § 1915(d). See Denton, 112 S. Ct. at 1733.

AFFIRMED.