

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7521
Conference Calendar

OTIS JOHNSON, JR.,

Plaintiff-Appellant,

versus

ANDY COLLINS ET AL.,

Defendants,

A. FORD,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-G-91-146
- - - - -

(October 19, 1995)

Before POLITZ, Chief Judge, and REAVLEY and SMITH, Circuit Judges.

PER CURIAM:*

Johnson argues that the magistrate judge erroneously charged the jury as to the requisite level of injury required in his Eighth Amendment excessive-force claim. Johnson's objection to the jury instruction is not the same error he now raises on

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

appeal. The magistrate judge fairly interpreted his objection as a request that the court require a finding of severe injury.

This court need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991) (internal quotations and citation omitted). Failure to consider Johnson's argument would not result in manifest injustice as his claim lacks merit.

Johnson is essentially asking this court to overrule decisions by another panel. As only an "overriding Supreme Court decision," a change in statutory law, or this court sitting en banc may overrule a panel decision, Johnson cannot prevail on this claim. See United States v. Zuniga-Salinas, 952 F.2d 876, 877 (5th Cir. 1992) (en banc).

The reasonableness of the defendant's action is "measured against the law as it existed at the time of the conduct in question." Palmer v. Lares, 42 F.3d 975, 978 (5th Cir. 1995). Because Huquet v. Barnett, 900 F.2d 838, 841 (5th Cir. 1990), controlled when Johnson sustained his injuries, the trial court correctly instructed the jury according to the standards established in Huquet. See Valencia v. Wiggins, 981 F.2d 1440, 1448 (5th Cir.), cert. denied, 113 S. Ct. 2998 (1993). Accordingly, the judgment of the district court is AFFIRMED.