UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-7609
Summary Calendar

DAVID WAYNE PALMER,

Plaintiff-Appellant,

VERSUS

FRED CHILDS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Mississippi

(CA-4:91-33-D-0)

(August 25, 1994)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:[*]

BACKGROUND

David Wayne Palmer, an inmate of Mississippi Department of Corrections' (MDOC) facility in Parchman, Mississippi, filed the instant § 1983 action pro se and in forma pauperis (IFP). Palmer's original complaint and amended complaint alleged that the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

defendants, who are eight officials from Parchman: deprived him of a portable radio; used unnecessary force against him; and subjected him to administrative double jeopardy when he was tried a second time for two Rules Violation Reports (RVR's) after the RVR's had been dismissed.

A Spears[1] hearing was held, after which the magistrate judge recommended dismissing all of Parker's claims except the claim for administrative double jeopardy. The district court then dismissed Palmer's claim for deprivation of property (the portable radio), but ordered that the claims for excessive force and double jeopardy proceed to trial.

A trial was held, after which the jury returned a verdict in favor of all of the remaining defendants, and ordered that Palmer take nothing and pay court costs. Palmer filed timely notice of appeal.

OPINION

Palmer presents only two challenges on appeal. First, he contends that the district court erroneously denied the jury's request to view a "layout" of Palmer's cell. The jury made this request, in writing, after it had begun its deliberations. The district court denied the request, noting that it could not furnish the jurors with additional evidence, and that they would have to rely on their independent recollection of the layout of Palmer's cell. Palmer contends that this was an error by the district court.

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[1] Spears v. McCotter, 766 F.2d 179, 182 (5th Cir. 1985).

There was no such physical layout of Palmer's cell entered into the record during the trial. We find no authority for the proposition that items not entered into evidence during the trial may be provided to the jury for assistance during the course of its deliberations. Moreover, the district court enjoys broad discretion when deciding whether to comply with a jury's request to view evidence properly entered into the trial record. United States v. Rice, 550 F.2d 1364, 1375 (5th Cir.), cert. denied, 434 U.S. 954 (1977). Therefore, even if the district court could have complied with the jury's request, its decision not to does not necessarily constitute an abuse of discretion.

Palmer also appears to argue that the district court erred by ruling on the jury's request while Palmer's counsel was not present. Because the layout could not have been sent into the jury room, however, the fact that the district court made this decision outside of the presence of Palmer's counsel was harmless. See United States v. Brooks, 786 F.2d 638, 643 (5th Cir. 1986) (failure of district court to confer with counsel prior to ruling on jury request reviewed for harmless error).

Palmer also posits several alleged errors by his trial counsel. These, he contends, rendered his counsel's assistance constitutionally ineffective. The attorney's alleged malpractice does not provide a basis for reversal because the right to effective assistance of counsel is based on the constitutional right to counsel, and there is no constitutional right to counsel in a civil rights action. See Strickland v. Washington, 466 U.S.

668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Branch v. Cole, 686 F.2d 264, 266 (5th Cir. 1982).

AFFIRMED.