

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8330
Conference Calendar

SYNNACHIA McQUEEN,

Plaintiff-Appellant,

versus

DAVID TURNER, CO III Officer,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-91-CA-315
- - - - -

August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Synacchia McQueen's motion for leave to appeal in forma pauperis (IFP) is hereby GRANTED. McQueen's motion for this Court to expedite his appeal is hereby DENIED.

McQueen appeals the denial of his motion for appointment of counsel. This Court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). The unconditional denial of counsel is a directly appealable interlocutory order. Robbins v. Maggio, 750

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

F.2d 405, 413 (5th Cir. 1985). Because the denial of counsel was unconditional, this Court has jurisdiction to entertain McQueen's appeal.

There is no automatic right to the appointment of counsel in a section 1983 case. Furthermore, a district court is not required to appoint counsel in the absence of "exceptional circumstances" which are dependent on the type and complexity of the case and the abilities of the individual pursuing that case. [This Court] will overturn a decision of the district court on the appointment of counsel only if a clear abuse of discretion is shown.

Cupit v. Jones, 835 F.2d 82, 86 (5th Cir. 1987)(citations omitted). Among the factors a district court should consider when faced with a request for counsel are:

- (1) the type and complexity of the case[;]
- (2) whether the indigent is capable of adequately presenting his case[;]
- (3) whether the indigent is in a position to investigate adequately the case[;]
- and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination[.]

Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir. 1982)(internal citations omitted).

The record makes clear that the district court did not abuse its discretion when it denied McQueen's motion for appointment of counsel. First, McQueen's claims are not sufficiently complex to require appointment of counsel. His complaint is based on his contention that the defendants applied excessive force to him. Such claims are common in federal court and are governed by a well-established legal standard. See Hudson v. McMillian, 503 U.S. ___, 112 S.Ct. 995, 999-1000, 117 L.Ed.2d 156 (1992).

Further, McQueen's factual allegations, if true, give rise to a simple excessive-force claim. The guiding hands of counsel are not necessary to mold a federal claim from those allegations. McQueen's state-law claims are equally uncomplicated.

Second, McQueen is capable of adequately presenting his case. His pleadings in the present case indicate that he is reasonably articulate and able to present legal arguments. Moreover, McQueen is an experienced pro se litigator in the federal courts.

Third, McQueen appears able to investigate his claims. The record already contains the relevant disciplinary, grievance, and medical records. McQueen knows his version of events. His claim that he will need to call expert witnesses to present his case is speculative. Additionally, his pleadings indicate that he is able to conduct legal research. His contention that he is unable to concentrate on the preparation of his case because of his deteriorating psychological condition is belied by his vigorous activity in the case.

Fourth, it is likely that the evidence at trial of McQueen's claims will consist largely of conflicting testimony regarding the events of June 22, 1990. Skill in the presentation of evidence and in the art of cross-examination would be helpful to McQueen. However, McQueen's factual allegations are relatively uncomplicated; the guards' versions of events likely would be uncomplicated as well. As mentioned above, McQueen's contention that he will need to call expert witnesses to prove his claims is speculative. We need not consider whether McQueen could

adequately question such witnesses.

Because the district court did not err by denying McQueen's motion for appointment of counsel, we affirm the district court's denial.

AFFIRMED.