IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8814
Conference Calendar

ALBERT EARL ROSS,

Plaintiff-Appellant,

versus

GARY PAINTER, Sheriff of
Midland County, Texas, and
MIDLAND COUNTY SHERIFF'S OFFICE,

Defendants-Appellees.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. MO093-CA-089

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(May 18, 1994)

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

BY THE COURT:

This Court construes Albert Earl Ross's appellate brief as a motion for leave to proceed in forma pauperis (IFP). This Court may authorize Ross to proceed IFP on appeal if he is economically eligible and his appeal is not frivolous. See Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986).

On appeal from a bench trial, this Court reviews the magistrate judge's factual findings for clear error and the issues of law de novo. Odom v. Frank, 3 F.3d 839, 843 (5th Cir. 1993). A prison employee may violate a prisoner's Eighth Amendment rights by being deliberately indifferent to the prisoner's serious medical needs. See Wilson v. Seiter, 501 U.S.

294, 111 S.Ct. 2321, 2323, 115 L.Ed.2d 271 (1991); Estelle v. Gamble, 429 U.S. 97, 105-06, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). However, a mere disagreement with one's medical treatment is not sufficient to show deliberate indifference. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Further, mere negligence will not suffice to support a claim of deliberate indifference. See Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989).

The magistrate judge did not err by determining that the defendants had not violated Ross's Eighth Amendment rights. The record reveals that Ross was diagnosed, treated, and his progress was followed until his condition was under control. As Ross's symptoms recurred, he was given additional treatment and medication. Further, the record indicates that the medical personnel at the jail were capable of evaluating Ross's condition.

Ross has failed to raise a non-frivolous argument on appeal; therefore, his motion for IFP is DENIED. Because the appeal is frivolous, it is DISMISSED. Fifth Cir. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).