UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-9026
Summary Calendar

LARRY GENE SEWELL,

Plaintiff-Appellant,

VERSUS

J. D. COOPER, Officer,
TDCJ, Clements Unit Employee, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Louisiana
(2:92-CV-291)

(January 28, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Plaintiff-appellant, Larry Gene Sewell, brought this section 1983 suit, alleging that he suffered emotional harm because guards at the Texas Department of Criminal Justice, Clements Unit, failed to respond for twenty minutes to a fellow inmate's call for help while being beaten by another inmate. He also alleges that he

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

suffers from emotional distress because of his concern that another inmate may be seriously hurt or killed under similar circumstances.

The district court dismissed the complaint on the ground that plaintiff lacked standing to assert this claim. Insofar as Sewell complains about the alleged violation of his fellow inmates' rights, the district court correctly concluded that Sewell lacks standing. **See Warth v. Seldin**, 422 U.S. 490, 498-99 (1975); **Powers v. Ohio**, 499 U.S. 400 (1991).

We also find no error in the district court's dismissal of Sewell's claim that the delayed response violated his Eighth Amendment right to be free from cruel and unusual punishment.[2] Sewell did not allege that he was actually threatened or that he feared an attack. He alleged only his fear that another inmate might be seriously hurt or killed because of a slow response to calls for help. Also, Sewell's allegations concern a single incident. Sewell does not allege confinement in a prison "where terror reigns" which was held sufficient to state a claim for failure to provide reasonable protection from injury at the hands of other inmates. **See Stokes v. Delcambre**, 710 F.2d 1120, 1125 (5th Cir. 1983).

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[2] Sewell has alleged a claim for purely emotional injuries due to his fear of violence. This circuit has yet to decide whether official conduct which produces purely emotional injuries may amount to an Eighth Amendment violation. **See Smith v. Aldingers**, 999 F.2d 109, 110 (5th Cir. 1993). Because this case may be decided without such a determination, we decline to address the issue.

Moreover, liability for an Eighth Amendment deprivation requires, at the least,[3] a showing of deliberate indifference by prison officials. **Johnson v. Lucas**, 786 F.2d 1254, 1259-60 (5th Cir. 1986). Sewell's claim is also insufficient because of its failure to allege any indifference by prison officials to his rights. The guards who allegedly failed to timely respond to another inmate's call for help certainly did not act with deliberate indifference to Sewell's rights. **See Rhodes v. Robinson**, 612 F.2d 766, 772 (10th Cir. 1979). Sewell did not allege that the guards were even aware that he could hear the beating. Sewell's alleged emotional harm was at most an "incidental and unintended consequence" of the guards' inaction. **Id.** Sewell therefore has not alleged conduct which amounts to a violation of his rights. The district court's dismissal of his suit is therefore

AFFIRMED.

[3] In some contexts, a showing of malicious and sadistic intent is required to establish an Eighth Amendment violation. **See Hudson v. McMillan**, 112 S. Ct. 995, 997 (1992); **Whitley v. Albers**, 475 U.S. 312 (1986).