

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9173
Conference Calendar

KENNETH YATES,

Plaintiff-Appellant,

versus

SHERIFF OF LUBBOCK COUNTY, TEXAS,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:93-CV-295-C
- - - - -

(May 18, 1994)

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

PER CURIAM:*

A complaint filed IFP can be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint is "frivolous where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___U.S.___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992) (citing Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)). This Court reviews a § 1915(d) dismissal for abuse of discretion. Denton, 112 S.Ct. at 1734.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Prison officials violate the constitutional proscription against cruel and unusual punishment when they demonstrate deliberate indifference to a prisoner's serious medical needs, constituting an unnecessary and wanton infliction of pain. Wilson v. Seiter, 501 U.S. 294, ___, 111 S.Ct. 2321, 2323, 2326-27, 115 L.Ed.2d 271 (1991). The facts underlying a claim of deliberate indifference must clearly evince the medical need in question and the alleged official dereliction. The legal conclusion of deliberate indifference must rest on facts clearly evincing wanton actions on the part of the defendants. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985).

A mere disagreement with one's medical treatment is not sufficient to state a cause of action under § 1983. 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).

Yates argues that the district court erroneously construed his allegations in his § 1983 complaint as a plea for medical help, and explains that he was pleading negligence for unreasonable acts which led to a second, unnecessary breaking of his hand, constituting cruel and unusual punishment.

Yates admitted that he was given medical treatment and medication on a weekly basis, but did not believe that the treatment was working. On appeal, he admits that the medical personnel followed their professional opinion that if his hand did not heal properly they would have to rebreak and recast it.

Yates is merely disagreeing with his medical treatment, and therefore does not state a cognizable claim for relief under § 1983. See Varnado, 920 F.2d at 321. At most, Yates contends that the defendants were negligent in rendering necessary medical treatment. Such a claim does not support a claim of deliberate indifference. See Jackson, 864 F.2d at 1246.

The district court's dismissal of Yates's § 1983 action is AFFIRMED.