IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10273
Conference Calendar

JOHNNY LEE STERLING,

Plaintiff-Appellant,

versus

DR. NORRID, Employee, TDCJ
Clements Unit

Defendant-Appellee.

- - - - - - - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:94-CV-7
- - - - - - - - - - -
(September 23, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

Johnny Lee Sterling sued Dr. Norrid pursuant to 42 U.S.C. § 1983 in relation to the doctor's treatment of his foot callouses. Sterling argues that the district court abused its discretion in dismissing his suit as frivolous pursuant to 28 U.S.C. § 1915(d). A § 1915(d) dismissal is reviewed for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). A complaint is frivolous if it lacks an arguable basis in law or in fact. Eason v. Thaler, 14 F.3d 8, 9 (5th Cir.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1994) (citing Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992)).

Prison officials violate the Eighth Amendment 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, 297, 302-05, 111 S. Ct. 2321, 2323, 2326-27, 115 L. Ed. 2d 271 (1991). "The Supreme Court recently adopted `subjective recklessness as used in the criminal law' as the appropriate definition of `deliberate indifference' under the Eighth Amendment.'" Reeves v. Collins, 27 F.3d 174, 176 (5th Cir. 1994) (quoting Farmer v. Brennan, ___ U.S. ___, 114 S. Ct. 1970, 1979-80, 128 L. Ed. 2d 811 (1994)). A prison official is not deliberately indifferent "unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer, 114 S. Ct. at 1979. "Under exceptional circumstances, a prison official's knowledge of a substantial risk of harm may be inferred by the obviousness of the substantial risk." Reeves, 27 F.3d at 176 (citing Farmer, 114 S. Ct. at 1981-82 and n.8).

At the Spears hearing, Sterling stated that he had been given cushioned insoles. He admitted that Dr. Norrid had ordered treatment with foot soaks and pumice stones in the spring and summer of 1993.

A mere disagreement with one's medical treatment is not sufficient to state a cause of action under § 1983. Varnado v. Collins, 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 gist of Sterling's complaint amounts to a disagreement with Dr. Norrid over the necessity of a prescription for tennis shoes. This does not rise to the level of a claim of constitutional dimension. The decision of the magistrate judge if AFFIRMED.

Sterling's motion for summary judgment is DENIED.