

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11051
Conference Calendar

JAMES HENRY HERRING,

Plaintiff-Appellant,

versus

LESLIE COTTEN, Sheriff,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CV-1941-R

- - - - -
(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

James Henry Herring argues that he was illegally held for thirty-eight days without a bond hearing.** A complaint filed in forma pauperis (IFP) may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993). This court reviews a § 1915(d) dismissal for an abuse of discretion. Id.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

**Herring does not allege that defendants Chief Barron, Nurse Bennett, or Nurse Jimmy Farmer were involved in any way in denying him a bond hearing.

In order to state a claim under § 1983, a plaintiff must show that the defendant deprived him of a right secured by the Constitution and laws of the United States while acting under color of state law. Manax v. McNamara, 842 F.2d 808, 812 (5th Cir. 1988). A defendant "must be either personally involved in the acts causing the deprivation of a person's constitutional rights, or there must be a causal connection between an act of the [defendant] and the constitutional violation sought to be redressed." Lozano v. Smith, 718 F.2d 756, 768 (5th Cir. 1983). "Personal involvement is an essential element of a civil rights cause of action." Thompson v. Steele, 709 F.2d 381, 382 (5th Cir.), cert. denied, 464 U.S. 897 (1983).

Herring did not allege in his § 1983 complaint that Sheriff Cotten was personally involved in any way in the denial of his bond hearing. In his appellate brief, Herring merely contends that Sheriff Cotten "knew" that Herring was being held illegally. This argument is insufficient to show Sheriff Cotten's personal involvement in denying Herring a bond hearing, or any causal connection between Sheriff Cotten and the alleged constitutional violation. The district court did not abuse its discretion by concluding that Herring had failed to allege any personal involvement on the part of Sheriff Cotten and that this issue thus had no arguable basis in fact or in law. See Booker, 2 F.3d at 115.

Herring does not appeal the dismissal of what the district court construed as his habeas claims. He does not allege that he is entitled to habeas relief from being held for five weeks

without bond; he is seeking only monetary damages. Neither does he argue on appeal that the amount of the bond was unreasonable; thus, this issue is deemed abandoned. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

Herring further argues that prison officials denied him the replacement of a broken lens in his glasses. He contends that this denial of medical treatment constituted cruel and unusual punishment.

As a pretrial detainee, Herring was protected by the Due Process Clause of the Fourteenth Amendment rather than by the Eighth Amendment's prohibition against cruel and unusual punishment. Morrow v. Harwell, 768 F.2d 619, 625-26 (5th Cir. 1985). "[P]retrial detainees are entitled to reasonable medical care unless the failure to supply it is reasonably related to a legitimate government objective." Fields v. City of South Houston, 922 F.2d 1183, 1191 (5th Cir. 1991) (quotation and citation omitted).

In response to the magistrate judge's questionnaire, Herring stated that after he broke his glasses, Chief Barron took them from him and placed them with his other property. Herring alleged that a doctor called him and said that he would fix the glasses, but they remained "unfixed." After approximately two weeks, Nurse Bennett asked Herring where he got his prescription. Herring told her that he got his prescription at Optiworld in Jacksonville, Florida. Herring stated that this incident was "the last time [he] heard of them." Herring further stated that he asked the new nurse, Nurse Jimmy Farmer, about his glasses and

Farmer told Herring that he knew nothing. Herring told Nurse Farmer that his prescription was at Optiworld in Jacksonville, and Farmer later informed Herring that "he couldn't find anything." Herring states that his sight is blurry after approximately three feet and that he is unable "to watch the TV like everyone else."

At most, Herring has alleged that prison officials were negligent for not getting his prescription from Optiworld in Jacksonville, Florida, and having his glasses fixed. Although pretrial detainees are entitled to reasonable medical care, an allegation of mere negligence cannot support a due process violation. Ortega v. Rowe, 796 F.2d 765, 767-68 (5th Cir. 1986), cert. denied, 481 U.S. 1013 (1987). Thus, this allegation also lacks an arguable basis in law or fact and the district court did not abuse its discretion by dismissing it. See Booker, 2 F.3d at 115.

AFFIRMED.