IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20001
Conference Calendar

MELVIN SHIVERS,

Plaintiff-Appellant,

versus

S.O. WOODS,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-91-2077

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(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Melvin Shivers appeals from summary judgment for S.O. Woods, Chairman of the State Classification Committee of the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID).

Summary judgment is proper when, viewing the evidence in the light most favorable to the non-movant, "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Amburgey v. Corhart Refractories Corp., 936 F.2d 805, 809 (5th Cir. 1991); Fed. R. Civ. P. 56(c).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Review of the record as a whole reveals that summary judgment in favor of defendant Woods was proper. Shivers asserts that Woods lacked the authority to have him returned to the TDCJ-ID following Shivers's acquittal on his burglary charge. However, in his affidavit, Woods stated that because he was in receipt of a parole-revocation order on Shivers, he "had no authority to authorize [Shivers's] release from that order until the appropriate order of the parole board was received." Shivers has offered no evidence to overcome Wood's sworn statements on this issue. Furthermore, Texas law specifically gives the authority to determine paroles to the Board of Pardons and Paroles (the Board), not to Woods. Tex. Code Crim. Proc. Ann. art. 42.18 §§ 1, 7(b) (West 1993). Accordingly, Woods is entitled to summary judgment as a matter of law as to this issue.

Shivers also faults Woods for failing to notify the Board that his conviction had been overturned. Woods stated in his affidavit that he did notify the Board when he received the court mandate reversing Shivers's burglary conviction. The district court found that "[t]he undisputed evidence shows that at some point defendant notified the Board of plaintiff's situation and that plaintiff was incarcerated over one year before the Board ordered his reparole." The court construed Shivers's claim as challenging Woods's lack of promptness in notifying the Board and determined that Woods was entitled to qualified immunity on this claim.

In assessing a qualified-immunity claim, this Court first determines whether the plaintiff has alleged a "violation of a

clearly established constitutional right." See Rankin v. Klevenhagen, 5 F.3d 103, 105 (5th Cir. 1993) (internal quotations and citation omitted). If so, the Court then decides whether the defendant is entitled to immunity from suit because his conduct was objectively reasonable in the light of the law as it existed at the time of the conduct in question. Id. at 108.

Shivers has failed to state a violation by Woods of a clearly established constitutional right. He does not allege that Woods intentionally withheld information from or misrepresented his situation to the Board. He has not shown that Woods had an affirmative duty to provide information to the Board about him, absent a request from the Board. See Tex. Code Crim. Proc. Ann. art. 42.18 § 9 (West 1993). Moreover, Shivers, himself, was entitled to contact the Board to request reinstatement of his parole. See Tex. Admin. Code tit. 37, § 145.71(b)(1) (1994). Thus, as the district court correctly concluded, Woods's alleged failure to act promptly constituted, at most, negligence which does not implicate the due process clause. See Daniels v. Williams, 474 U.S. 327, 333-34, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986). Accordingly, the district court properly granted Woods's motion for summary judgment.

AFFIRMED.