

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20874
Summary Calendar

C.S. HOBBS,

Plaintiff-Appellant,

VERSUS

JAMES A. COLLINS, Director, Texas Department of
Criminal Justice, Institutional Division, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(92-CV-1389)

(July 24, 1995)

Before DAVIS, JONES, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

C.S. Hobbs appeals from a partial final judgment dismissing one of his two civil rights claims. We **AFFIRM** in **PART** and **DISMISS** in **PART**.

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

In May 1992, Hobbs, an inmate in the Estelle Unit of the Texas Department of Criminal Justice - Institutional Division (TDCJ), filed a *pro se, in forma pauperis* complaint under 42 U.S.C. § 1983, claiming violations of the Eight Amendment (excessive use of force) and the Due Process Clause of the Fourteenth Amendment (refusal to allow witnesses at a disciplinary hearing). In May 1994, Hobbs sought to amend his complaint. The district court denied amendment of the Eighth Amendment claim, but allowed it for the due process claim.

At a **Spears** hearing on the due process claim, Hobbs asserted that he had been denied the opportunity to call witnesses at a disciplinary hearing at which he was found guilty of striking a prison officer, and received 15 days solitary confinement and a loss of 2,000 days of "good time" credit. The defendants could not produce a record of the disciplinary hearing to show why the witnesses were not called. The court found that, absent a reason explaining otherwise, the witnesses should have been called. The parties, together with the court, then agreed on a "settlement", whereby Hobbs would receive three days of additional "good time" credit for each of his 15 days in solitary confinement (Hobbs had already been restored the 2,000 days credit he had lost as punishment). With that, the court dismissed Hobbs' due process claim, noting that the Eighth Amendment claim was still pending.

II.

A.

Hobbs first challenges the district court's dismissal of his due process claim.² We find no error. It appears that Hobbs mistakenly construes the district court's action as a dismissal under 28 U.S.C. 1915(d). In fact, the court rendered judgment for Hobbs, awarding him 45 days "good time" credit. Hobbs' claims that the award is insufficient, raised for the first time in his reply brief, lack merit. At the *Spears* hearing, Hobbs' objected to the 45-day award only to the extent that he thought he should, instead, be allowed to "go home" -- a plainly unavailable remedy. To the extent that Hobbs now asks for additional compensation, we need not consider matters not raised before the district court. *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991).

B.

Hobbs complains next that the district court erred in denying the amendment to his Eighth Amendment claim. As noted, there has been no final judgment on this claim, and the denial of Hobbs' motion to amend is not appealable under the collateral order doctrine. *Wells v. South Main Bank*, 532 F.2d 1005, 1006 (5th Cir. 1976). As such, we are without jurisdiction to consider this issue.

² Although the order from which Hobbs appeals did not dismiss his Eighth Amendment claim, the unmistakable intent of the order was to enter partial final judgment under Fed. R. Civ. P. 54(b); therefore, the order is appealable. *Kelly v. Lee's Old Fashioned Hamburgers, Inc.*, 908 F.2d 1218, 1220 (5th Cir. 1990) (en banc).

III.

For the foregoing reasons, the judgment on the due process claim is **AFFIRMED**; the appeal from the denial of leave to amend the Eighth Amendment claim is **DISMISSED**.

AFFIRMED in PART and DISMISSED in PART