UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-30011
Summary Calendar

CHARLES JOSEPH, JR.,

Plaintiff-Appellant,

VERSUS

SIDNEY BARTHELEMY, MAYOR, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 93-3620 F)

(August 9, 1994)

Before GARWOOD, DAVIS, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Charles Joseph, Jr., an inmate of the Orleans Parish Prison sued the Criminal Sheriff of Orleans Parish, and others, under 28 U.S.C. § 1983, complaining of inadequate medical care, use of excessive force, threats of physical violence and disciplinary action, and unhealthy living conditions. His allegations do not make clear whether he had been convicted or was a pretrial detainee. A magistrate judge found that, in either capacity,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Appellant's allegations failed to state an arguable claim in fact or law, and she recommended dismissal under 28 U.S.C. § 1915(d). Over Appellant's objection, the district court dismissed the action without prejudice. Joseph appeals. We affirm.

On appeal, Joseph asserts that he was a pretrial detainee so we will analyze his claim under the Due Process Clause of the Fourteenth Amendment. Morrow v. Harwell, 768 F.2d 619, 625-26 (5th Cir. 1985).

The most that can be said for Appellant's claims that he was denied his medication for six days is that prison officials were negligent. This is insufficient to state a constitutional claim. See Simons v. Clemons, 752 F.2d 1053, 1055 (5th Cir. 1985). Likewise, Appellant's claims that a prison nurse examined him and found him not in need of medical treatment when he was, in fact, ill is at best a showing of negligence.

Joseph alleges that while being moved from one location to another in the prison he sought to sit in a chair which a guard pulled out from under him causing him pain in his leg and back. We analyze excessive use of force claims by pretrial detainees under the standards of Hudson v. McMillian, 112 S. Ct. 995 (1992); Valencia v. Wiggins, 981 F.2d 1440, 1446 (5th Cir.), cert. denied, 113 S. Ct. 2998 (1993). In this analysis we look to see whether the force was applied maliciously or sadistically for the very purpose of causing harm. There is no allegation to this effect. Without such a showing there is no constitutional violation.

Appellant claims that chemicals were sprayed in the prison to

control rodents and pests and that this made him cough, feel nauseated, and have headaches. Rodent and pest control is clearly incident to a legitimate government purpose and is not punishment. It is, therefore, not actionable. See Morrow, 768 F.2d at 625. Mattresses were removed from the prisoners for certain periods of time and Joseph complains of this. This removal obviously interfered with Joseph's efforts to live as comfortably as possible, as did the prison's spraying of chemicals, but it does not convert a condition of confinement into punishment. See, Bell v. Wolfish, 441 U.S. 520, 537 (1979).

Finally, Appellant complains that guards threatened him with physical abuse and disciplinary action. The mere use of words by prison guards, even if violent or threatening, does not amount to a constitutional violation. McFadden v. Lucas, 713 F.2d 143, 146 (5th Cir.), cert. denied, 464 U.S. 998 (1983); see also Bender v. Brumley, 1 F.3d 271, 274 n. 4 (5th Cir. 1993). There was, therefore, no abuse of discretion when the district court dismissed this claim as frivolous.

AFFIRMED.