

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40352
Summary Calendar

FREDERICK TYRONE RIDGE,

Plaintiff-Appellant,

versus

TEXAS DEPARTMENT OF CRIMINAL
JUSTICE-INSTITUTIONAL DIVISION,
JAMES A. COLLINS, DIRECTOR,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(1:94-CV-47)

(September 19, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

This appeal involves a civil rights case based primarily on a 21-day delay in obtaining a medical appointment. Frederick Tyrone Ridge, an inmate, filed his civil rights suit alleging several constitutional claims, including an Eighth Amendment claim regarding the denial of adequate medical care and various due process violations. The district court dismissed the suit as

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

frivolous pursuant to 28 U.S.C. section 1915(d). Finding no abuse of discretion in the district court's disposition of Ridge's claims, we affirm.

I. FACTS AND PROCEDURAL HISTORY

According to the Appellant, on August 5, 1993, while Ridge was awaiting a medical appointment in the Stiles Unit Infirmary, prison officials escorted inmate Michael Charles Bush into the infirmary. Bush had cuts and stab wounds after having been in a fight with another inmate. Upon entering the infirmary, Sergeant Alford ordered all general population inmates to leave the infirmary because Bush's condition presented an emergency. Ridge refused to leave but instead asked Warden Smith about his medical appointment. Smith's response was to threaten to lock up Ridge and the other inmates if they did not leave and come back after a count was taken. Ridge then questioned the authority of the order, and Warden Smith stated that the order was made under his authority. Smith then instructed Lieutenant McCutcheon to restrain Ridge for disobeying an order. Ridge was placed in pre-hearing detention. The next day, August 6, 1993, Ridge received notice of a prison disciplinary offense and remained in detention until his hearing on August 12, 1993.

Ridge and his two witnesses testified at the hearing that Ridge was never in the infirmary. The disciplinary hearing officer, Captain Wages, relied on Lt. McCutcheon's report in finding Ridge guilty. Ridge received 15 days solitary confinement. Ridge's medical appointment had been rescheduled to August 13,

1993. However, because he was in solitary confinement until August 24, he was unable to make the appointment until August 26, 1993.

Ridge, proceeding pro se and in forma pauperis, filed the instant suit against the following prison officials: James A. Collins, R. Smith, L. Wages, Lt. McCutcheon and Lt. Nwene pursuant to 42 U.S.C. section 1983. The magistrate judge determined that Ridge's allegations were frivolous, warned Ridge about sanctions for filing additional frivolous actions, and recommended dismissing the suit pursuant to 28 U.S.C. section 1915(d). After de novo review, the district court overruled Ridge's objections, adopted the magistrate's recommendation, and dismissed the suit with prejudice. Ridge filed timely a notice of appeal.

II. STANDARD OF REVIEW

The district court may dismiss an in forma pauperis complaint as frivolous if it lacks an arguable basis in law or fact. 28 U.S.C. section 1915(d). Macias v. Raul A. (Unknown), Badge No. 153, 23 F.3d 94, 97 (5th Cir. 1994) (citing Denton v. Hernandez, ___ U.S. ___, ___, 112 S.Ct. 1728, 1733 (1992)). "Section 1915(d) `accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless.'" Id. (quoting Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 1832 (1989)). We review such a dismissal only for abuse of discretion.

III. ISSUES

DELAY OF MEDICAL TREATMENT

Ridge contends that the 21-day delay he experienced in obtaining a medical appointment constituted cruel and unusual punishment in violation of the Eighth Amendment. Deliberate indifference to the serious medical needs of a prisoner constitutes unnecessary and wanton infliction of pain in violation of the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 291 (1976). In regard to delayed medical treatment, the deliberate indifference must have resulted in harm. Mendoza v. Lynaugh, 989 F.2d 191, 193 (5th Cir. 1993). Further, to constitute deliberate indifference, the defendants must have had a sufficiently culpable state of mind. Id. (citing Wilson v. Seiter, 501 U.S. 294, ___, 111 S.Ct. 2321, 2323 (1991)).

A reading of Ridge's pleadings in the court below reveals three scenarios which Ridge claims resulted in the unconstitutional delay of his medical treatment.

(1) COVER-UP OF THE ATTEMPTED MURDER

Ridge contended that certain prison officers "willfully and knowingly conspired . . . by using the closing of the infirmary for an emergency pre-text to flagrantly cover up the alleged attempted capitol [sic] murder and assault incident against inmate C. Bush that denied Plaintiff and other inmates their medical appointments which further subjected plaintiff to cruel and unusual punishment for his placement in solitary confinement and not receiving [sic] any treatment before his release." Ridge concedes that inmate Bush had been stabbed several times in a fight. Assuming arguendo that

the officers were using the emergency to somehow "cover up" the assault against inmate Bush, such actions do not show that the officers were being deliberately indifferent to Ridge's medical needs. As stated above, deliberate indifference requires that the defendants must have had a sufficiently culpable state of mind. According to Ridge's scenario, the fact that Ridge's medical appointment was delayed was incidental to the officers' alleged ulterior motive of a "cover up." We note additionally that according to Ridge himself he was asked to come back after the head count. This claim has no arguable basis in fact or law.

(2) FALSELY ACCUSED OF DISCIPLINARY OFFENSE

Ridge also claimed that the officers falsely accused him of disobeying an order to exit the infirmary so that they could deny him medical treatment and to "conceal evidence of an attempted capitol [sic] murder and assault on an inmate." However, Ridge was found guilty at a disciplinary hearing of disobeying the order.¹ Moreover, in his pleadings Ridge has admitted that he did not initially follow the order but rather, he questioned the authority of the officer who ordered the inmates to exit the infirmary.² His claim that the officers falsely accused him of disobeying an order to deny him medical treatment is specious and fanciful.

¹ His claim that the disciplinary proceeding was inadequate is addressed infra.

² For example, Ridge stated that "it should be further noted that any conduct of my own which may have appeared disruptive could have only been triggered after the warden had made the unprofessional decision when he ordered all inmates to leave the infirmary."

(3) FAILURE TO PROPERLY ISOLATE THE FIGHTING INMATES

Finally, Ridge has contended that the prison officials "failed to isolate the prisoners that endangered the safety of other prisoners which caused the disruption of unit operation and plaintiff being denied his medical appointment." This allegation appears to be an attempt to bootstrap inmate Bush's failure-to-protect claim into Ridge's delay-of-medical attention claim. To establish an Eighth Amendment failure-to-protect claim a prisoner must show that prison officials were deliberately indifferent to his need for protection. Wilson v. Seiter, supra. A prison official is deliberately indifferent "if he [the defendant] knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." Farmer v. Brennan, ___ U.S. ___, 114 S.Ct. 1970, 1984 (1994).

Ridge contends that the defendants' failure to isolate the other two inmates allowed the fight to occur which caused Bush's stab wounds. Those injuries resulted in the emergency which caused the infirmary to be evacuated which caused Ridge's appointment to be rescheduled. Assuming arguendo that the defendants were deliberately indifferent to Bush's need for protection, Ridge does not have standing to assert Bush's claim. A "plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." Warth v. Seldin, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205 (1975). Ridge's failure-to-protect claim has no basis in fact or law.

To the extent Ridge is claiming that the defendants' failure

to isolate the fighting inmates resulted in the delay of attention to his medical needs, this claim also fails. Once again, assuming arguendo that the defendants were deliberately indifferent to Bush's need for protection, it does not show that the defendants were deliberately indifferent to Ridge's serious medical needs.

Accordingly, the trial court was correct in dismissing Ridge's claims because none of his scenarios indicate that the defendants had a sufficiently culpable mental state, i.e., deliberate indifference. The trial court was further justified in its actions because Ridge has failed to assert any harm attributable to the 21-day delay in obtaining a medical appointment.

INADEQUATE DISCIPLINARY HEARING PROCEDURES

Ridge next claims that he did not receive due process at the disciplinary hearing in which he was found guilty of the charge of failing to obey an order. His punishment was solitary confinement for 15 days. A prisoner punished by solitary confinement or loss of good-time credits, such as Ridge, must receive: (1) written notice of the charges against him at least 24 hours prior to the hearing; (2) a written statement of the fact finders as to the evidence relied on and the reasons for the disciplinary action taken; and (3) the opportunity to call witnesses and present documentary evidence in his defense, unless these procedures would create a security risk in the particular case. Wolff v. McDonnell, 418 U.S. 539, 563-66, 94 S.Ct. 2963, 2978-80 (1974).

Ridge's pleadings indicate that he received all the process that he was due at his disciplinary hearing. Additionally, because

there is evidence to support the finding of guilt by the hearing officer, the finding is not arbitrary and capricious and must be upheld. Stewart v. Thigpen, 730 F.2d 1002, 1005 (5th Cir. 1984). Thus, the district court properly dismissed this claim as frivolous because it lacks an arguable basis in law and fact.³

CONCLUSION

For the reasons set forth above, the judgment is AFFIRMED.

³ Ridge also raises certain claims not presented to the court below. We decline to address issues raised improperly for the first time on appeal. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Additionally, Ridge contends that the magistrate judge failed to correct its factual findings regarding Lt. Nwene's alleged misconduct. Brief at 11. Ridge, however, did not mention any factual error regarding Lt. Nwene in his objections to the magistrate judge's report. Ridge is precluded from raising such an objection now. Rodriguez v. Bowen, 857 F.2d 275, 277 (5th Cir. 1988).