

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-40379
Summary Calendar

MARIO A. YARRITO,

Plaintiff-Appellant,

VERSUS

T. C. FORD, J. MEYER, and A. P. LARSON,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(6:92CV783)

(December 30, 1994)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:¹

Appellant, a Texas prison inmate, brought a civil rights action against prison physicians claiming deliberate indifference to his serious medical needs and fraudulent concealment of his true medical condition. Following a Spears hearing, the magistrate judge recommended dismissal as frivolous under § 1915(d). The district court did so. We affirm.

To prevail, Appellant "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976), cert. denied, 434 U.S. 974 (1977). The facts presented must clearly evidence wanton actions on the part of the defendants. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985). "Unsuccessful medical treatment does not give rise to a § 1983 cause of action. Nor does '[m]ere negligence, neglect or medical malpractice.'" Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991) (citations omitted). We have carefully reviewed the record and find therein absolutely no evidence of wanton action on the part of the defendants. Nor do we find in this record any facts to support Appellant's allegation that the physicians deliberately concealed the true nature of his medical condition and medical treatment. In short, we can find no abuse of discretion by the district court.

AFFIRMED.