

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-40450  
Summary Calendar

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JOSEPH TONY BADEAUX,

Plaintiff-Appellant,

VERSUS

ST. LANDRY PARISH SHERIFFS DEPT., ET AL.,

Defendants,

ST. LANDRY PARISH POLICY JURY, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Louisiana  
(6:92-CV-157)

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(January 26, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant Badeaux, a former state prisoner once incarcerated in the St. Landry Parish jail, brought this § 1983 civil rights action against Warden Curtis Sam, Sheriff Howard Zerangue, and other prison officials contending that they were deliberately indifferent to his serious medical need. The district court granted summary judgment in favor of Warden Sam and Sheriff

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Zerangue and dismissed Appellant's claim as to the other defendants for failure to state a claim upon which relief could be granted. On appeal, Appellant argues only as to defendants Sam and Zerangue, and does not reassert his earlier contentions as to the other jail personnel. Accordingly, claims as to other defendants are waived. Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993). We affirm.

Appellant argues that Sam and Zerangue's personal lack of medical training and their failure to provide such training to their employees violate his Eighth Amendment rights. However, supervisory officials are not liable under § 1983 for the actions of subordinates on any theory of vicarious liability. Thompkins v. Belt, 828 F.2d 298, 303 (5th Cir. 1987). A superior can be liable either if he is personally involved in the constitutional deprivation or if there is a causal connection between the superior's conduct and the violation. Id. at 304. Appellant has not presented summary judgment evidence from which it can be concluded that either defendant Sam or defendant Zerangue were personally involved in a constitutional deprivation or that their actions were causally connected with a constitutional violation committed by a subordinate. Therefore, the district court properly entered summary judgment for those defendants.

Even had Sam and Zerangue been personally involved in the alleged delay in providing treatment, the evidence shows no more than five days elapsed following Appellant's first request for medical treatment and during that period he was examined and treated by the prison nurse, brought by prison personnel to two

different hospitals were he was given medication for pain, and his knee was treated by a physician. Additionally, surgery was scheduled and performed within one week of the initial diagnosis. Delay in medical care constitutes an Eighth Amendment violation only if there has been deliberate indifference which results in substantial harm. Even if Sheriff Zerangue and Warden Sam were responsible for the delay in the initial diagnosis and surgery (which is not shown by the record) Badeaux has demonstrated at most that this delay could constitute negligence. He has not shown that he was substantially harmed by either delay nor that either of the defendants knew of, and disregarded, an excessive risk to his health. See Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989).

Because Appellant has not shown the existence of a genuine issue of material fact which would require a trial the defendants were entitled to judgment as a matter of law and the district court's grant of summary judgment is

AFFIRMED.