

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40941
Conference Calendar

WILLIAM BYRON HOLLIS, JR.,

Plaintiff-Appellant,

versus

W.E. GORE, MAJOR,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 94-CV-260
- - - - -

(January 24, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

In this action under 42 U.S.C. § 1983, William Byron Hollis, Jr. contends that it was a due process violation to place him on container restriction. To prevail on this claim, Hollis must allege that the prison rules set forth mandatory criteria for allowing commissary purchases and that the granting or denying of those purchases "substantially affect[ed] the nature or length of [his] confinement." Jackson v. Cain, 864 F.2d 1235, 1250-51 (5th Cir. 1989); Hewitt v. Helms, 459 U.S. 460, 470-72,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

103 S. Ct. 864, 74 L. Ed. 2d 675 (1983). Even assuming that Hollis has alleged that he has a liberty interest in commissary privileges, Hollis concedes that he was present at a disciplinary hearing on November 8, 1993, when he was placed under commissary restriction. Hollis has not alleged a due process violation.

Hollis also asserts that he must be allowed to purchase vitamins because he receives an inadequate diet. A prisoner alleging that the conditions of his confinement violate the Eighth Amendment must show, among other things, that he has been deprived "of a single, identifiable human need such as food, warmth, or exercise." Wilson v. Seiter, 501 U.S. 294, 304, 111 S. Ct. 2321, 2327, 115 L. Ed. 2d 271 (1991). Only deprivations of "the minimal civilized measure of life's necessities" are sufficient to form the basis of an Eighth Amendment violation. Rhodes v. Chapman, 452 U.S. 337, 347, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981). Hollis does not request an improvement in the food he is served, but simply requests that he be allowed to buy vitamins so that he can take 1000 mg of vitamin C each day. Hollis has not shown any nutritional deficit in the food he receives.

Hollis's appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

Hollis is cautioned against the filing of frivolous complaints and frivolous appeals lightly. If Hollis persists in

his frivolous filings, this Court will consider imposing the full panoply of sanctions.

APPEAL DISMISSED.