IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41056
Conference Calendar

DONNIE JOHNSON,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Head Director, COFFIELD MEDICAL PERSONNEL, Medical Dep't, and UNIDENTIFIED LARSON, Dr., Head Medical Director,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:94-CV-29

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(January 25, 1995)

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

PER CURIAM:*

Donnie Johnson appeals the dismissal of his civil rights complaint by the magistrate judge proceeding under 28 U.S.C. § 636(c). Johnson argues that the magistrate judge failed to provide him notice and opportunity to respond within ten days before dismissing his complaint as frivolous. Section 636(b) of Title 28 requires such notice and opportunity to respond to a magistrate judge's recommendation to a district court. The

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

parties signed a consent form pursuant to § 636(c). When a magistrate judge proceeds to adjudicate the claims under subsection (c), the notice and opportunity to respond under subsection (b) are inapplicable.

An in forma pauperis complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). We review for an abuse of discretion. See id. at 1734.

Johnson argues that the examining physician failed to x-ray or tape his ribs, although he did prescribe pain medication. Johnson's disagreement with his treatment amounts to no more than a difference of opinion between doctor and patient as to treatment. As such, it does not rise to the level of a constitutional violation. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Johnson contends that bunk beds should be equipped with safety bars. Conditions of confinement violate the prohibition against cruel and unusual punishment when the conditions "fall below a minimum standard of decency required by the Eighth Amendment," evaluated under society's "evolving standards of decency." Alberti v. Klevenhagen, 790 F.2d 1220, 1223 (5th Cir. 1986) (internal quotations and citations omitted). "[T]he Constitution does not mandate comfortable prisons . . . ." Rhodes v. Chapman, 452 U.S. 337, 349, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981). Although bars installed on top bunks may produce safer prison sleeping quarters, the failure to have safety bars does not offend the standards of decency of our society. Cf.

Alberti, 790 F.2d at 1223-24 (noting that a constant threat of violence and reign of terror violates the Eighth Amendment).

Johnson argues that it is discriminatory to require general population inmates to use double bunking when prisoners housed in administrative segregation are not so required. "To succeed in his equal protection claim [Johnson] must prove purposeful discrimination resulting in a discriminatory effect among persons similarly situated." Muhammad v. Lynaugh, 966 F.2d 901, 903 (5th Cir. 1992) (footnote omitted). Security reasons create the distinction between prisoners in general population and those in administrative segregation. Thus, these groups of inmates are not "similarly situated" for purposes of receiving equal treatment in housing.

Because Johnson's claims do not have arguable bases in law, the magistrate judge did not abuse her discretion in dismissing the complaint for frivolousness. See Denton, 112 S. Ct. at 1734.

AFFIRMED.