

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50304  
Conference Calendar

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KEVIN DEWAYNE GRANT,

Plaintiff-Appellant,

versus

VICKY L. REDDEN  
and MATHEW HUDSPETH,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-93-CA-327  
- - - - -

(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

IT IS ORDERED that Kevin Dewayne Grant's motion for leave to appeal in forma pauperis (IFP) is DENIED. The appeal lacks arguable merit and is, therefore, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

An IFP complaint may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993); see

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). This court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S.Ct. at 1734.

The Eighth Amendment's prohibition against "cruel and unusual punishment" protects Grant from improper medical care only if the care is "sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). A prison official acts with deliberate indifference "only if he knows that inmates face a substantial risk of serious harm and [he] disregards that risk by failing to take reasonable measures to abate it." Farmer v. Brennan, \_\_\_ U.S. \_\_\_, 114 S.Ct. 1970, 1984, \_\_\_ L.Ed.2d \_\_\_ (1994). Thus, "[m]ere negligence, neglect or medical malpractice" does not give rise to a § 1983 cause of action. Fielder v. Bosshard, 590 F.2d 105, 107 (5th Cir. 1979).

The facts, as alleged by Grant, fail to approach the level of "deliberate indifference" to his serious medical needs. He admitted at the hearing that, on the day in question, he was not provided with his seizure medication because he did not have his pill pass and the computer was "down." At most, the denial of his medication, under the facts alleged by Grant, amounted to mere negligence. Thus, the district court did not abuse its discretion in dismissing this claim as frivolous.

APPEAL DISMISSED.