

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50405
Conference Calendar

DWIGHT SILVERMAN GARMON,

Plaintiff-Appellant,

versus

GEORGE JONES
and GREGORY WOODSON,

Defendants-Appellees.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. W-94-CA-108

- - - - -
(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

To proceed in forma pauperis (IFP) on appeal of the dismissal of his civil rights suit, Dwight Silverman Garmon must show that he is a pauper and that he will present a nonfrivolous issue on appeal. See Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). His poverty is not in question. However, he has not presented a nonfrivolous appellate issue.

An IFP complaint may be dismissed as frivolous pursuant to § 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 Denton v.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). Section 1915(d) dismissals are reviewed for abuse of discretion. Id. at 1734.

"[P]rison work requirements which compel inmates to perform physical labor which is beyond their strength, endangers their lives, or causes undue pain constitute cruel and unusual punishment." Howard v. King, 707 F.2d 215, 219 (5th Cir. 1983). Work which is not cruel and unusual per se may also violate the Eighth Amendment if prison officials are aware it will significantly aggravate a prisoner's serious medical condition. Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989). A negligent assignment to work that is beyond the prisoner's physical abilities, however, is not unconstitutional. Id.

Garmon does not allege a serious medical condition to which prison officials were deliberately indifferent. At best, his complaint states a negligence claim only. Negligence will not support a claim of deliberate indifference. See Jackson, 864 F.2d at 1246. Further, the negligent act of an official causing loss or injury will not, standing alone, state a claim under § 1983. Daniels v. Williams, 474 U.S. 327, 328, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986) (addressing Fourteenth Amendment claim of a convicted prisoner); Rhodes v. Chapman, 452 U.S. 337, 347-48, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981) (Eighth Amendment claim).

Because Garmon's claim is without merit, the district court did not abuse its discretion by dismissing the action as frivolous. Denton, 112 S. Ct. at 1734; see 5th Cir. R. 42.2.

IFP DENIED; APPEAL DISMISSED.