

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50593  
Summary Calendar

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JAMES WASHINGTON, JR.,

Plaintiff-Appellant,

VERSUS

DEBORAH A. PARKER, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Western District of Texas  
(W-93-CA-376)

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(April 27, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

Per curiam:\*

Appellant *pro se*, James Washington, Jr. (Washington), a Texas state prisoner, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that he was denied due process at a prison disciplinary hearing, subjected to excessive use of force, and that

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Pursuant to that Rule, the Court has determined that this opinion should not be published.

prison officials were deliberately indifferent to his serious medical needs. He did not request a jury trial. The district court referred the case to a magistrate judge, who conducted an evidentiary hearing, and filed a report and recommendation, recommending that the case be "dismissed with prejudice for failure to state a claim upon which relief may be granted and that judgment be entered in favor of the Defendants pursuant to Federal Rules of Civil Procedure 12(b)(6) and 56, respectively." The district court adopted the magistrate judge's report and recommendation, and entered summary judgment in favor of the defendants, dismissing the case with prejudice. We affirm.

#### FACTS

On August 20, 1993, Appellee Deborah Parker (Parker) a Disciplinary Hearing Captain at the Hughes Unit of the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID) held a hearing on a disciplinary charge against Washington for refusal to work. Appellant contends that he requested that Dr. Hurley, a medical doctor employed at the Hughes Unit, be called to testify at his disciplinary hearing, and that Parker denied that request. Appellant indicated that Dr. Hurley would have testified that his medical condition prevented him from doing the work to which he had been assigned. The notes attached to the disciplinary hearing report indicate that the only witness Washington requested to be present was the officer that charged him with the disciplinary offense. Further, there was no dispute that Washington's medical condition (including one elbow deformed by an

old gunshot wound, one bad leg, and chronic back problems) restricted the type of work he could do. Captain Parker concluded at the close of the disciplinary hearing that Washington, by refusing to work before he knew what the work assignment was going to be that day, had violated prison disciplinary rules, and placed him on work management status.

Washington's new status required that he change living quarters. Steven Christensen (Christensen), a Correctional Officer, was ordered to inventory Washington's property and escort him to his new cell. While Christensen was inventorying Washington's property for the move, a scuffle broke out between Washington and Christensen. David Van Horn (Van Horn), also a correctional officer came to Christensen's assistance and helped subdue Washington. There are factual disputes about some of the details of this physical encounter, although all parties are in agreement that it was appropriately termed a "major use-of-force." Washington was examined and photographed by medical personnel at the infirmary immediately after the incident. He complained of some pain, but no injuries were apparent.

#### PROCEEDINGS BELOW

The magistrate judge conducted a hearing, at which Parker, Christensen, Van Horn, a prison doctor, and Washington testified. Portions of Washington's prison medical and disciplinary records were admitted, as well as the investigative report conducted by the Internal Affairs Division of TDCJ-ID. The parties were advised that all of the evidence submitted would be considered pursuant to

Rule 56 and were given additional time to supplement the record after the hearing. The magistrate judge then recommended dismissal "for failure to state a claim" under Rules 12(b)(6) and 56, and also recommended summary judgment for the defendants, although they had not so moved, concluding that: 1) Washington received sufficient due process at the disciplinary hearing; 2) Washington suffered a *de minimis* injury only, and the defendants' version of the events surrounding the use-of-force incident was more credible than his; and 3) the defendants were not deliberately indifferent to Washington's serious medical needs.

Washington filed objections, which the district court overruled when it adopted the magistrate judge's report and granted summary judgment for the defendants. Final judgment was entered accordingly.

#### DID DISTRICT COURT MAKE IMPROPER CREDIBILITY DETERMINATIONS?

Washington contends that the district court exceeded the scope of the evidentiary hearing by making improper credibility determinations and thus, summary judgment was improper. His argument is unavailing.

Initially, Washington's assertion that the evidentiary hearing conducted on May 18, 1994, "was a factual hearing," is correct, but affords no relief. Washington received, in effect, a full evidentiary hearing on the merits, with proper notification to that effect, which he lost on the weight of the evidence and credibility.

The magistrate judge specifically informed Washington that the

May 18, 1994, hearing was an evidentiary hearing at which he would "have an opportunity to make a brief opening statement, testify, enter any relevant exhibits or documents into evidence, and to summarize the evidence in oral argument before the Court." Washington was also informed that the defendants would have a corresponding opportunity and that the parties were to complete exhibit lists and bring relevant documentary evidence to the hearing. Washington was further advised that if he chose to call witnesses, he should submit a witness list and a summary of expected testimony so the court could order the witnesses produced "if their testimony appears to be relevant and not cumulative."

Although the magistrate judge recommended granting summary judgment for the defendants, and the district court adopted that recommendation and granted summary judgment, the district court's ruling is more properly a judgment after an evidentiary hearing, not a summary judgment. The magistrate judge was entitled to make credibility determinations regarding the evidence at such a hearing. See 28 U.S.C. § 636(b)(1)(B).

To the extent Washington argues that the magistrate judge's credibility determinations were erroneous, his argument fails. This court is not free to reweigh the evidence or to re-evaluate credibility of witnesses or to substitute for the district court's reasonable factual inferences from the evidence other inferences that the reviewing court may regard as more reasonable. *Martin v. Thomas*, 973 F.2d 449, 453 n.3 (5th Cir. 1992) (citation omitted). A review of the record leads us to conclude that the factual

determinations complained of were not erroneous.

DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS

Washington alleged, in the district court, that prison officials were deliberately indifferent to his serious medical needs because they failed to treat properly the injuries he allegedly received as a result of the use-of-force incident. He does not address that issue on appeal. It is thus abandoned. See *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Washington does allege, on appeal, that he suffered "great pain" as a result of new work assignments. However, that deliberate indifference claim was not presented to the district court. Thus, this court need not address it. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991) (internal quotations and citations omitted). A fact question is involved in Washington's claim, and we therefore do not reach the new work assignment complaint.

Also, Washington specifically dismisses defendants Christensen and Van Horn, the prison officials directly involved in the use-of-force incident, and does not address the issue on appeal. The excessive use-of-force issue is abandoned. See *Brinkmann*, 813 F.2d at 748.

DUE PROCESS AT PRISON DISCIPLINARY HEARING

Washington also contends that he did not receive sufficient due process at a prison disciplinary hearing. This argument fails, as well. The requirements of due process are satisfied if "some evidence" supports the decision by the disciplinary board. *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455 (1983). Prison disciplinary proceedings will be overturned "only where there is no evidence whatsoever to support the decision of the prison officials." *Reeves v. Pettcox*, 19 F.3d 1060, 1062 (5th Cir. 1994).

"Ascertaining whether this standard is satisfied does not require an examination of the entire record, independent assessment of the credibility of the witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the records that could support the conclusion reached by the disciplinary board." *Hill*, 472 U.S. at 455-56. "Federal Courts will not review the sufficiency of the evidence at a disciplinary hearing; a finding of guilt requires only the support of 'some facts' or 'any evidence at all.'" *Gibbs v. King*, 779 F.2d 1040, 1044 (5th Cir.), *cert. denied*, 476 U.S. 1117, (1986) (citation omitted).

Defendant Parker, the prison Disciplinary Captain, conducted a disciplinary hearing in conjunction with a disciplinary charge Washington incurred for refusing to work on August 16, 1993. Washington was found guilty of refusing to work and received loss of privileges but did not lose any "good time" nor was he placed in solitary. Thus, the standard of due process applicable to

Washington requires only an informal nonadversary evidentiary review with notice and an opportunity to present a statement. *Hewitt v. Helms*, 459 U.S. 460, 476-77 (1983).

Washington received the appropriate notification of the hearing. By his own admission, Washington was provided with counsel substitute who gave him advance notice of the hearing, and Washington testified at the hearing. Washington received sufficient due process.

#### CONCLUSION

For the foregoing reasons, we AFFIRM the district court's final judgment dismissing Washington's claims with prejudice.