

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60146  
Conference Calendar

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DANIEL EDWARDS, IV,

Plaintiff-Appellant,

versus

R. J. DAVIS, DR., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-G-93-764  
- - - - -

(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Daniel Edwards, IV, filed a pro se, in forma pauperis (IFP) civil rights complaint alleging that he was denied adequate medical treatment in violation of the Eighth Amendment. The district court dismissed the complaint without prejudice as frivolous.

A complaint filed IFP can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id.

To state a medical claim cognizable under § 1983, a convicted prisoner must allege acts or omissions sufficiently harmful to evidence a deliberate indifference to serious medical needs. Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Unsuccessful medical treatment, negligence, neglect, and even medical malpractice do not state a claim under § 1983. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Edwards received a cut above his right eye when another inmate bit him during a supervised basketball game. He was immediately seen by a nurse who cleaned and dressed the wound and told him he would be seen by the doctor in two days. Edwards was seen by a doctor five days later and the doctor prescribed antibiotics and pain medication because the cut had become infected. The following day Edwards was sent to John Sealy Hospital where minor surgery was performed to treat the infection, although Edwards alleges that he has loss some vision in his right eye. These facts do not demonstrate that prison officials were deliberately indifferent to Edwards's medical needs. See Walker v. Butler, 967 F.2d 176, 178 (5th Cir. 1992).

To the extent that Edwards alleges state law claims, these claims were properly dismissed. The district court has discretion to decline to exercise supplemental jurisdiction over state law claims if the court has dismissed all claims over which it had original jurisdiction. 28 U.S.C. § 1367(c)(3); Noble v. White, 996 F.2d 797, 799 (5th Cir. 1993). The district court

dismissed all of the federal law claims, and therefore could decline to exercise jurisdiction over the state law claims.

The judgment of the district court is AFFIRMED. Edwards's motion for appointment of counsel is DENIED. See Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir. 1982).