

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60295
Conference Calendar

MICHAEL S. JONES,

Plaintiff-Appellant,

versus

BILLY SOLLIE,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 93-CV-5

- - - - -
(January 26, 1995)

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

PER CURIAM:*

Michael S. Jones filed this § 1983 action for "negligence of care and protection" against Billy Sollie, Chief of Police of the Police Department of Meridian, Mississippi. The magistrate judge dismissed Jones' action as frivolous under § 1915(d), because Jones' testimony at the Spears hearing alleged negligence only.

Jones repeats his allegations of negligence on appeal. He contends that the Chief of Police failed to make his "shake-down"

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

officer comply with the policy of the Jail, "which resulted in negligence."

"To state a claim under § 1983, a plaintiff must (1) allege a violation of rights secured by the Constitution or laws of the United States and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law."

Leffall v. Dallas Independent School Dist., 28 F.3d 521, 525 (5th Cir. 1994). Allegations of negligent conduct do not implicate the due process clause. Salas v. Carpenter, 980 F.2d 299, 306-07 (5th Cir. 1992). The Constitution does not supplant traditional tort law. Id. at 306. "[T]here is a significant distinction between a tort and a *constitutional* wrong." Leffall, 28 F.3d at 532 (internal quotation marks and citation omitted). A § 1983 plaintiff relying on substantive due process is required to show that the state actor acted with "deliberate indifference," which involves some showing of intentional or reckless, knowing conduct. Id. at 531.

The magistrate judge correctly characterized Jones' allegations as an action for mere negligence. Jones admitted in his responses to the defendant's request for admissions that the defendant had no prior knowledge of Morris' actions. R. 54, 61. Jones' complaint lacks an arguable basis in law. The magistrate judge did not abuse his discretion in dismissing Jones' action as frivolous under § 1915(d). See Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992).

APPEAL DISMISSED AS FRIVOLOUS. See 5th Cir. R. 42.2.