

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60346
Conference Calendar

ROBERT GRANT,

Plaintiff-Appellant,

versus

MASON SISTRUNK ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. CA-2:93-358

- - - - -
(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Robert Grant, a pretrial detainee in the Lamar County Jail, was transferred to the Forrest County Jail and placed in a cell with another inmate. This inmate had a bullet and exploded the round, striking Grant between the thumb and index finger of the right hand. As a result of this injury, Grant filed an action pursuant to 42 U.S.C. § 1983 against Mason Sistrunk and Robert Steele, officials of Lamar County.

The magistrate judge dismissed Grant's suit as frivolous pursuant to 28 U.S.C. § 1915(d). A pauper's complaint may be

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

dismissed as frivolous if the complaint lacks an arguable basis in law or in fact. A reviewing court will disturb such a dismissal only on finding an abuse of discretion. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992).

"Section 1983 affords redress against a person who under color of state law deprives another person of any federal constitutional or statutory right." San Jacinto Sav. & Loan v. Kacal, 928 F.2d 697, 700 (5th Cir. 1991). Although it is beyond dispute that the defendants were state actors as officials of the sheriff's department of Lamar County, Grant has not shown that they deprived him of any federal constitutional or statutory right. Grant's allegations show that he was no longer under the care of the officials of Lamar County when his injury occurred in the Forrest County Jail. It does not appear that any additional factual development would allow this claim to "pass § 1915(d) muster." See Eason v. Thaler, 14 F.3d 8, 9-10 (5th Cir. 1994).

Grant also argues that his case should not have been dismissed with prejudice. Although § 1915(d) dismissals are generally without prejudice, if the allegations in the complaint are legally insufficient and cannot be cured by an amendment, § 1915(d) dismissal may be with prejudice. See Graves v. Hampton, 1 F.3d 315, 318-19 (5th Cir. 1993). As shown above this is such a case.

AFFIRMED.