

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60348

Summary Calendar

ROBERT GRANT,

Plaintiff-Appellant,

versus

BILLY McGEE et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(2:93-CV-357)

(November 23, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Pursuant to 28 U.S.C. § 1915(d), a magistrate judge dismissed Robert Grant's 42 U.S.C. § 1983 civil rights action as frivolous. We find that the magistrate judge did not abuse his discretion in dismissing Grant's complaint. Accordingly, we affirm.

I.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Robert Grant alleges that while he was detained in Forrest County Jail, his cellmate attempted to injure himself by exploding a bullet. The bullet struck Grant between the thumb and index finger of his right hand. Grant filed this § 1983 action against Billy McGee, Forrest County Sheriff, and Charles Bolton, Chief Deputy of Corrections of the Forrest County Sheriff's Department.

The parties consented to proceeding before a magistrate judge. The magistrate judge conducted a Spears hearing and concluded that Grant's claim had no arguable basis in law or fact. At the hearing, Grant "was unable to state any act or omission on the part of the defendants which could have possibly contributed to his injury." Mem. Op. & Order at 3. In addition, Grant was unable to state what the defendants could have done to prevent the incident.

II.

Grant argues that McGee and Bolton were grossly negligent when they allowed Grant's cellmate to have a bullet in his possession. We have recognized that "a constitutional deprivation can result from tortious conduct exceeding mere negligence but not quite rising to the level of intention, e.g., deliberate (or conscious) indifference, recklessness, or gross negligence." Salas v. Carpenter, 980 F.2d 299, 307 (5th Cir. 1992) (internal quotation marks omitted). However, Grant did not substantiate his legal theory with sufficient facts to permit the court to conclude that his claim had an arguable basis in fact. Cf. Eason v. Thaler, 14 F.3d 8, 10 (5th Cir. 1994) (§ 1915(d) dismissal vacated and

remanded so that Spears hearing could be held which might provide further factual development of prisoner's claims).

Since Grant had the opportunity to further develop the factual basis of his complaint, yet was unable to, the magistrate judge did not abuse his discretion in dismissing the complaint as frivolous. Accordingly, we

AFFIRM.