

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60471
Summary Calendar

Maxie Smith,

Plaintiff/Appellant,

versus

Donald James, et al.,

Defendants/Appellees.

Appeal from the United States District Court
For the Southern District of Mississippi
(3:93-CV-411BN c/w 3:93-CV-412BN, 3:93-CV503BN)

(April 7, 1995)

Before JOHNSON, JOLLY, and DAVIS, Circuit Judges.*

JOHNSON, Circuit Judge:

Maxie Smith, a state prisoner proceeding *pro se* and *in forma pauperis*, brought this action pursuant to 42 U.S.C. § 1983 against various state officials alleging a denial of proper medical care, a denial of access to the courts and conversion of his property. After a trial, a magistrate judge found that Smith had not established the violation of any constitutional right. Smith appeals and we AFFIRM.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I. FACTS AND PROCEDURAL HISTORY

This case is an amalgam of Smith's complaints against three prison officials--Jerry Kennedy, Donnie James and Rosalyn Wilkinson. Specifically, Smith contends that all three defendants improperly denied him medical treatment. Further, Smith alleges that Wilkinson retaliated against him for filing grievances by denying him access to the courts by stopping his mail. Finally, Smith contends that Kennedy seized and has not returned certain property from his locker at the Pike County Community Work Center.

The parties gave their consent to proceed before a magistrate judge. The magistrate judge held a bench trial and thereafter entered an order finding that Smith had not established that any of the defendants had violated his constitutional rights. Smith appeals from the magistrate judge's dismissal with prejudice.

II. DISCUSSION

A. Access to the Courts

Smith contends that defendant Wilkinson denied him access to the courts by mishandling his mail and, on one occasion, neglecting to sign him up to go to the law library when he asked to do so. It is well-established that access to the courts is a fundamental constitutional right and that prison officials must ensure that prisoner access to the courts is adequate, meaningful and effective. *Tubwell v. Griffith*, 742 F.2d 250, 252 (5th Cir. 1984). However, to successfully prosecute a section 1983 claim

of denial of access to the courts, a prisoner must show that his position as a litigant was prejudiced as a result of the alleged violation. *Walker v. Navarro County Jail*, 4 F.3d 410, 413 (5th Cir. 1993); *Henthorn v. Swinson*, 955 F.2d 351, 354 (5th Cir.), *cert. denied*, 112 S.Ct. 2974 (1992). Smith has never contended or provided evidence that he missed any filing deadlines or otherwise suffered any prejudice as a result of any alleged conduct by prison officials. Thus, this claim must fail.

B. Deprivation of Personal Belongings

Smith contends that he gave his locker key to defendant Jerry Kennedy and that personal property that was in his locker is now missing. Thus, Smith claims that there was an intentional deprivation of his property by Kennedy in violation of the due process clause of the Fourteenth Amendment.

The Supreme Court has held, though, that even the intentional deprivation of a state prisoner's property through the random and unauthorized act of a state prison official does not constitute a violation of due process if the state's post-deprivation remedy is adequate to satisfy the requirements of due process. *Hudson v. Palmer*, 468 U.S. 517, 533, 104 S.Ct. 3194, 3204 (1984); *see also, Holloway v. Walker*, 790 F.2d 1170, 1174 (5th Cir.), *cert. denied*, 107 S.Ct. 571 (1986). Moreover, the burden is on the complainant to show that the remedy is not adequate. *Marshall v. Norwood*, 741 F.2d 761, 764 (5th Cir. 1984).

In this case, Mississippi law provides a remedy for a person

who has been deprived the ownership or use property because of another's unauthorized acts of dominion or ownership. See *General Motors Acceptance Corp. v. Bates*, 954 F.2d 1081, 1086 n.5 (5th Cir. 1992). Smith has not availed himself of this remedy and he has in no way met his burden to show that this remedy is not adequate. Hence, Smith has not shown any violation of his right to due process and thus he has shown no loss that is cognizable under section 1983. *Marshall*, 741 F.2d at 764. For this reason, this claim must fail.

C. Denial of Medical Treatment

Smith contends that the defendants, and in particular defendant James, refused to give him his medication. A deliberate indifference to the serious medical needs of a prisoner violates the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 291 (1976).

The magistrate judge, however, determined that Smith had failed to prove that the defendants had withheld his medication.¹ Moreover, the magistrate judge found that Officer James put forth credible evidence that he did not deny Smith his medication.

Our review of the factual underpinnings of the magistrate judge's determination is limited. We review only for clear error. Under that standard, "[i]f the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though

¹ In fact, the record reveals that Smith was obviously receiving some medication because officers found a stash of unused medication in his cell.

convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *Anderson v. Bessemer City*, 470 U.S. 564, 573-74, 105 S.Ct. 1504, 1511 (1985).

Moreover, when such findings are based on the credibility of witnesses, even greater deference to the trial court's findings is required. *Id.* at 1512.

In this case, we cannot say that the magistrate judge's view of the evidence is implausible in light of the entirety of the record. Accordingly, we see no clear error and this point of error must be denied.

III. CONCLUSION

For the reasons stated above, the judgment of the magistrate judge is AFFIRMED.