

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60500  
Conference Calendar

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ELROY SAYRE,

Plaintiff-Appellant,

versus

LEE ROY BLACK, Commissioner,  
Mississippi Dept. of Corrections,  
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 91-CV-63  
- - - - -

(January 26, 1995)

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

PER CURIAM:\*

An in forma pauperis complaint may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993); see Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). This Court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S. Ct. at 1734.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The Eighth Amendment's prohibition against "cruel and unusual punishment" protects Sayre from improper medical care only if the care is "sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). Deliberate indifference encompasses only unnecessary and wanton infliction of pain repugnant to the conscience of mankind. Id. at 105-06. Unsuccessful medical treatment, acts of negligence, neglect, or medical malpractice are insufficient to give rise to a cause of action under 42 U.S.C. § 1983. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Nor is a prisoner's disagreement with his medical treatment sufficient to state a claim under § 1983. Id.

The district court properly characterized Sayre's contentions as amounting to disagreement and dissatisfaction with his medical treatment and not deliberate indifference to his serious medical needs. Notwithstanding Sayre's unsupported assertions to the contrary, the court, in determining that Sayre's complaint was frivolous, neither relied on Sayre's medical records to refute his allegations nor otherwise inappropriately resolved disputed facts. Rather, the court accepted Sayre's allegations as true and relied on his medical records only to the extent that they did not contradict Sayre's testimony at the Spears\*\* hearing. See Wesson v. Oglesby, 910 F.2d 278, 282 (5th Cir. 1990). As no abuse of discretion has

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\*\* Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

been demonstrated, the § 1915(d) dismissal of Sayre's complaint is AFFIRMED.