

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60611
Conference Calendar

MELVIN JONES,

Plaintiff-Appellant,

versus

ROGER D. VANLANDINGHAM, BARRY
PARKER, and FRED CHILDS,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:89cv304-D
- - - - -

(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Melvin Jones, a state prison inmate, has appealed from the district court's judgment in favor of the appellees, who are Mississippi state prison officials. We affirm the judgment.

Jones testified that the appellees subjected him to cruel and unusual punishment, which would violate his Eighth Amendment rights. The district court found, however, that the appellees did not participate in any mistreatment of Jones. Rule 52(a), Fed. R. Civ. P., provides in part: "Findings of fact, whether

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." Accordingly, "when a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error." Anderson v. City of Bessemer City, 470 U.S. 564, 575 (1985).

The district court's findings are based on the appellees' testimony, as corroborated by that of a prison physician and by Jones's prison records. Accordingly, the contention that those findings are clearly erroneous is frivolous, being without arguable merit. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Jones's application for the appointment of counsel is DENIED, and his appeal is DISMISSED.

APPEAL DISMISSED.