

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60858  
Summary Calendar

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THOMAS C. SAWYER, JR.,

Plaintiff-Appellant,

versus

JAMES T. HICKEY, ET AL.,

Defendants,

SHERIFF J. P. LUBY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CR-C-90-176)

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September 27, 1995

Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:<sup>1</sup>

In his civil rights action, Thomas C. Sawyer, Jr., *pro se* and *in forma pauperis*, challenges the damages award, various evidentiary rulings, and the denial of his motion to contact jury members. Because we conclude that the district court did not abuse its discretion in any of these matters, we **AFFIRM**.

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<sup>1</sup> 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 Pursuant to that Rule, the court has determined that this opinion should not be published.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.

Sawyer, a Texas state prisoner, and formerly jailed in Nueces County, claimed in his 42 U.S.C. § 1983 action, among other things, that, while in jail, he had been placed in administrative segregation for over 500 days in violation of his constitutional rights. A jury trial was held on November 7, 1994. The jury found in favor of Sawyer, awarding him \$500 for violations of his rights to due process and the free exercise of religion.

A.

Sawyer maintains that the award was "manifestly inadequate". He moved for a new trial on this issue, and the motion was denied. "The denial of a motion for new trial on the issue of inadequate damages is a matter of discretion with the trial court and is not subject to review except for abuse of discretion." **Young v. City of New Orleans**, 751 F.2d 794, 798 (5th Cir. 1985). Furthermore, we will interfere with a damage award "only in extreme and exceptional cases where the award is so gross . . . as to be contrary to right reason". **Id.** (internal quotation marks and citations omitted). "Unless an award is so inadequate as to shock the judicial conscience and to raise an irresistible inference that passion, prejudice, corruption or other improper cause invaded the trial, the jury's determination of the fact is considered inviolate." **Taylor v. Green**, 868 F.2d 162, 164 (5th Cir.) (internal quotation marks, footnote, and citations omitted), *cert. denied*, 493 U.S. 841 (1989).

The record reflects that Sawyer was placed in administrative confinement for the protection of himself and other prisoners, rather than for purposes of punishment. It is rational for a jury not to award damages to a prisoner who, based on prior convictions and behavior in prison, is placed in administrative confinement because of a reasonable safety concern.

1.

Though Sawyer claims that he received an inadequate diet, was allowed less than one hour a day out of his cell, was denied free exercise of religion, was subjected to cruel and unusual punishment, and was denied access to the court because of limited access to the law library and telephone, there is evidence to the contrary. No evidence of an inadequate diet was presented, and according to testimony Sawyer was allowed time, if less than that of prisoners in the general population, to leave his cell and use the law library and telephone. The jury's determination that the damages amounted to no more than \$500 is neither shocking nor contrary to reason.

2.

Sawyer contends that the award is inadequate in light of alleged severe mental and psychological distress he suffered while in administrative confinement. Mental and emotional distress are not compensable injuries under § 1983 unless the plaintiff has proved that "such injury actually was caused". **Carey v. Piphus**, 435 U.S. 247, 264 (1978). The record contains conflicting evidence that Sawyer suffered mental or emotional distress to the degree

alleged. A prison counselor testified that Sawyer's complaints of depression and fatigue were not consistent with his observations of Sawyer.

3.

Sawyer cites cases from other circuits in which much higher awards for wrongful confinement were upheld on appeal. It goes without saying that "[t]he propriety of awards are [sic] not determined by comparing verdicts in similar cases, but rather by a review of the facts of each case." **Hale v. Fish**, 899 F.2d 390, 403 (5th Cir. 1990). Under the facts of this case, the jury award is not so grossly inadequate as to be contrary to right reason and shocking to the judicial conscience. Accordingly, the district court did not abuse its discretion in denying Sawyer's motion for a new trial.

B.

Sawyer asserts next that the district court erred by refusing to allow him to proceed on a claim of cruel and unusual punishment, and that this precluded him from "making the jury aware of the deplorable conditions of solitary confinement". To the contrary, the court did state that Sawyer had a due process claim for cruel and unusual punishment, and the record contains many comments by Sawyer about the conditions of his confinement.

C.

Sawyer contends also that the district court abused its discretion in overruling his motion in limine and admitting evidence of his prior criminal history. A challenged evidentiary

ruling is reviewed for abuse of discretion and will be reversed only if it is erroneous and affects a party's substantial right. *E.g., Brunet v. United Gas Pipeline Co.*, 15 F.3d 500, 505 (5th Cir. 1994); FED. R. EVID. 103.

Sawyer's prior convictions were admissible, *inter alia*, as relevant evidence under FED. R. EVID. 402, because it was necessary for jail officials to consider Sawyer's prior criminal record to determine his classification.

D.

Sawyer suggests also that he might have been awarded greater damages if he had been allowed to show how his jail records, which indicated that he had sexually assaulted another inmate and started a fire, adversely affected his later confinement. This evidence was denied by the district court because it was not relevant. Sawyer's claim is frivolous because the purported evidence had nothing to do with the damage award.

E.

Sawyer claims that the district court abused its discretion by denying his motions for orders compelling discovery and for a subpoena duces tecum and by overruling his objections to the magistrate's orders and rulings. Each of these challenges are meritless. We review a district court's decision to curtail discovery only for an abuse of discretion. *E.g., Wichita Falls Office Assoc. v. Banc One Corp.*, 978 F.2d 915, 918 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 2340 (1993). Review of a district court's denial of a subpoena duces tecum is also for abuse of discretion

because it is a form of discovery. See **Comeaux v. Uniroyal Chemical Corporation**, 849 F.2d 191, 194 (5th Cir. 1988), recognized as abrogated on other grounds by **Carroll v. General Acc. Ins. Co. of America**, 891 F.2d 191 (5th Cir. 1988); see also **Gibbs v. King**, 779 F.2d 1040, 1047 (5th Cir.), cert. denied 476 U.S. 1117 (1986).

The district court did not abuse its discretion by overruling Appellant's objections to the magistrate's orders and rulings. "The trial judge has wide discretion as to relevance and materiality of evidence. Such rulings will not be disturbed on appeal absent a clear showing of an abuse of discretion." **United States v. Grimm**, 568 F.2d 1136, 1138 (5th Cir. 1978). The gravamen of Sawyer's argument is that he needed the requested witnesses and documents to show that he "had nothing to do with the alleged sexual assault that was the specific reason for him being placed in solitary confinement". Sawyer fails to indicate how this information relates to the issue of damages and thus does not show that the district court abused its discretion.

F.

Relying on FED. R. EVID. 606(b), Sawyer contends that the district court abused its discretion in denying his post-trial motion to contact jury members. Rule 606(b) prohibits the use of juror testimony to impeach a verdict, except to establish whether extraneous prejudicial information was brought to the jury's attention or whether there were improper outside influences on the jury. Sawyer does not claim that extrinsic influences tainted the jury deliberations. Rather, he seeks to discover what happened in

the jury's deliberations in the hope of uncovering an impropriety. Thus, the district court's refusal to allow a "fishing expedition" of post-verdict interviews was proper. See **United States v. Chavis**, 772 F.2d 100, 110 (5th Cir. 1985).

G.

Sawyer asserts that the district court abused its discretion when it denied him prejudgment interest. He relies on Texas case-law to support his argument that prejudgment interest is mandatory. Sawyer misstates the law. Although state law governs the calculation of prejudgment interest in § 1983 suits, **Pressey v. Patterson**, 898 F.2d 1018, 1026 (5th Cir. 1990), the decision to award prejudgment interest is within the court's discretion. **Hale**, 899 F.2d at 404. Sawyer has not made a showing that the district court abused its "authority to fashion relief" by denying prejudgment interest. See **id.**

III.

For the foregoing reasons, the judgement is

**AFFIRMED.**