

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 95-20556
Summary Calendar

MICHAEL DWYER MCCULLOUGH,

Plaintiff-Appellant,

VERSUS

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
Institutional Division,

Defendant,

ERIC GRAY, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-676)

July 11, 1996

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Michael McCullough received a full bench trial on his claim, under 42 U.S.C. § 1983, that the individual corrections officers assaulted him without provocation. The magistrate judge made oral

Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

findings of fact and conclusions of law and entered a judgment against McCullough.

We affirm. The magistrate judge made credibility determinations that McCullough has not shown to be erroneous. Apparently, McCullough was removed from the dining room because he made an improper remark to an officer. While being taken back to his cell, McCullough kicked backwards at Officer Eric Gray. The four escorting officers SSS Dillow, Dickey, Riddle, and Gray SStook McCullough to the ground.

The court found that the force the officers utilized was done in a good faith effort to restore order, not to inflict unnecessary pain. McCullough received only three small abrasions near his right eye. There is no showing that McCullough was subjected to cruel and unusual punishment.

Accordingly, the judgment is AFFIRMED. McCullough's motion for appointment of counsel is DENIED.