

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40336
Conference Calendar

ARNOLD AYALA,

Plaintiff-Appellant,

versus

SHEILA R. ALFORD ET AL.,

Defendants,

MICHAEL J. MCCAULEY,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:94-CV-172
- - - - -

October 23, 1996

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

PER CURIAM:*

Arnold Ayala, #440313, filed a pro se, in forma pauperis complaint under 42 U.S.C. § 1983 alleging that excessive force had been used against him by corrections officers. Following a bench trial, the magistrate judge concluded that the use of force

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

was appropriate and dismissed Ayala's complaint with prejudice.

If the factfinder's account of the evidence is plausible, this court may not reverse it; if two views of the evidence are permissible, "the factfinder's choice between them cannot be clearly erroneous." Anderson v. City of Bessemer City, 470 U.S. 564, 573-74 (1985). This court will not disturb credibility determinations on appeal. See Williams v. Fab-Con, Inc., 990 F.2d 228, 230 (5th Cir. 1993) (this court defers to the district court if factual determinations are based upon credibility determinations). Ayala has not demonstrated that the magistrate judge's findings of fact were clearly erroneous. See Odom v. Frank, 3 F.3d 839, 843 (5th Cir. 1993). The magistrate judge did not err by dismissing Ayala's complaint.

AFFIRMED.