

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40075
Summary Calendar

DIOTSIS DEE SMITH,

Plaintiff-Appellant,

versus

TYLER POLICE DEPARTMENT; MEDICAL
STAFF AT SMITH COUNTY JAIL;
RICHARD M. SMITH, Officer;
TOM DEAL, Officer,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Texas
USDC No. 6:95-CV-362

January 7, 1998

Before JOLLY, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:*

Texas state prisoner Diotsis Dee Smith, No. 654148, proceeding pro se, appeals from the magistrate judge's dismissal of his 42 U.S.C. § 1983 claims of excessive force used during his arrest and deliberate indifference to a serious health risk of contracting tuberculosis by being placed in a cell with inmates infected with tuberculosis.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

He argues on appeal that the magistrate judge did not consider all of the facts Smith presented. He also implies that the magistrate judge did not conduct fair and impartial hearings.

A review of the hearing conducted in accordance with Spears v. McCotter, 765 F.2d 179, 180-81 (5th Cir. 1985), the memorandum opinion and partial order of dismissal following the hearing, and the memorandum opinion and order following his trial on his excessive force claims reveals that the magistrate judge considered all of the evidence presented to her and conducted fair hearings.

Furthermore, we AFFIRM the magistrate judge's orders dismissing Smith's claims essentially for the reasons set forth in the magistrate judge's memorandum opinions and orders of dismissal. Smith v. Tyler Police Department, et al., No. 6:95-CV-362 (E.D. Tex., May 1, 1996, and Dec. 12, 1996).

A F F I R M E D.