

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40136
Summary Calendar

JEFFREY BENSON DURHAM,

Plaintiff-Appellant,

versus

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:96-CV-89
- - - - -

August 7, 1997

Before WISDOM, DUHE', and BARKSDALE, Circuit Judges.

PER CURIAM:*

Jeffrey Benson Durham, Texas prisoner # 670219, filed a civil rights action under 42 U.S.C. § 1983 against various prison officials. The district court dismissed Durham's complaint as frivolous under 28 U.S.C. § 1915. A § 1915 dismissal is reviewed for abuse of discretion. Eason v. Thaler, 14 F.3d 8, 10 (5th Cir. 1994).

Durham asserts that the defendants were deliberately

* The court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

indifferent to his serious medical needs and had retaliated against him for filing grievances. See Farmer v. Brennan, 511 U.S. 825, ___, 114 S. Ct. 1970, 1980 (1994); Woods v. Smith, 60 F.3d 1161, 1166 (5th Cir. 1995), cert. denied, 116 S. Ct. 800 (1996).

With respect to Durham's allegations that Dr. Browne changed his medical classification based on x-rays alone without looking at his ankle and became belligerent and falsified Durham's medical file following Durham's filing of a grievance, the district court abused its discretion in dismissing the claims of deliberate indifference and retaliation as being without a basis in fact or law. This dismissal of Dr. Browne is VACATED.

The district court did not abuse its discretion in dismissing the remainder of the claims against the other medical, security, and supervisory personnel. This portion of the dismissal is AFFIRMED.

Durham's motion for appointment of counsel on appeal is DENIED. We do not consider whether exceptional circumstances exist which may require the appointment of counsel as this case proceeds to trial.

The case is hereby remanded to the district court for additional proceedings consistent with this opinion.

AFFIRMED IN PART; VACATED AND REMANDED IN PART; MOTION DENIED.