

THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40327
Summary Calendar

ROBERT SHAKESPEARE,

Plaintiff-Appellant,

versus

JEFFREY BOZEMAN, Correctional Guard;
LESLIE BROWN, Correctional Guard;
CARLOS YBARRA, Correctional Guard;
KERRI TUTT, Correctional Guard;
KEVIN POWELL, Sergeant,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:95-CV-767

February 2, 2000

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Robert Shakespeare, Texas prisoner # 586367, appeals the district court's judgment in favor of the defendants in this civil rights action. Shakespeare raises three issues on appeal: (1) whether he was denied due process when the district court proceeded to trial even though he was allegedly not mentally competent; (2) whether the district court erred in finding in favor of the defendants on his excessive force claim; and (3) whether he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

received a fair trial when the district court considered his status as a convicted felon in determining his credibility. Shakespeare did not present evidence of his alleged mental incompetency. Based on his submissions to the court, his execution of the consent to proceed before the magistrate judge, and his failure to demand a jury trial in accordance with FED. R. CIV. P. 38(b), the district court did not err in conducting a bench trial with Shakespeare proceeding *pro se*. Shakespeare did not establish that the district court clearly erred in crediting the testimony of the defendants and denying his excessive force claim. See Anderson v. City of Bessemer City, 470 U.S. 564, 575 (1985). Finally, Shakespeare has not established that the district court abused its discretion in considering his status as a convicted felon. See FED. R. EVID. 609(a)(1). Therefore, the judgment of the district court is

A F F I R M E D.