

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-40037  
Conference Calendar

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ALPHONSO SMITH,

Plaintiff-Appellant,

versus

R JOHNSON, Correctional Officer III, Coffield Unit;  
BELINDA MAPLE, Sergeant, Coffield Unit,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:98-CV-488  
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April 12, 2000

Before WIENER, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Alphonso Smith, Texas prisoner #621036, appeals from the dismissal of his civil rights action as frivolous and for failure to state a claim. Smith contends that he should have been allowed to amend his complaint before it was dismissed; that the defendants, a correctional officer and a sergeant, were deliberately indifferent to his serious medical needs; and that

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 should not have been required to exhaust his prison administrative remedies because he sought damages only and could not obtain damages through Texas's remedies procedures.

The magistrate judge held a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985), to bring into focus the factual basis of Smith's claims. Because the magistrate judge held a *Spears* hearing, Smith need not have been allowed to amend his complaint.

Smith's complaint and his testimony at the *Spears* hearing did not indicate that the defendants were deliberately indifferent to his serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Smith's contention regarding exhaustion is without merit. The complaint was dismissed on its merits.

AFFIRMED.