

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-40127
Summary Calender

WILLIE BENTON,

Plaintiff-Appellant,

v.

JEFFREY TAYLOR, Correctional Officer; JIMMY PACE, Correctional Captain,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 9:96-CV-82

November 23, 1999

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM ¹:

Willie Benton, a Texas prisoner (#537558), appeals from the district court's order granting a motion for summary judgment in favor of defendants Jeffery Taylor and Jimmy Pace in Benton's 42 U.S.C. Section 1983 civil rights action.

In deciding Benton's excessive force claim, the district court relied upon our decision in Siglar v. Hightower, 112 F.3d 191 (5th Cir. 1997), to conclude that Benton's injuries were de minimis and thus could not form the basis of a Section 1983 claim. The district court did not have the benefit of our recent decision in Gomez v. Chandler, 163 F.3d 921 (5th Cir. 1999), in which we elaborated upon the definition of "de minimis" injuries in a factual context more similar to the instant case than Siglar. There remain genuine issues of material fact about, inter alia, whether the application of force was even necessary in Benton's case, whether defendant Taylor's assault

¹Pursuant 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR.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.

caused Benton any long-lasting injuries. The district court's order granting summary judgment further proceeding in light of Gomez.

Benton's request for appointment of counsel is DENIED as unnecessary.

VACATED AND REMANDED; REQUEST FOR APPOINTMENT OF COUNSEL DENIED.