

April 28, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41338
Summary Calendar

DAVID WHITE,

Plaintiff-Appellant,

versus

LESLIE E. DUPUY, Mental Health Services Director-University of Texas Medical Branch, in her individual and official capacities; DEE KIFOWIT, Director-Texas Council on Offenders with Mental Impairments, in her individual and official capacities; ROMEO YAP, Psychiatrist-Eastham Unit, in his individual and official capacities; LIMSIACO MARCIANO, Psychiatrist-Eastham Unit, in his individual and official capacities; GARY JOHNSON, Director-Texas Department of Criminal Justice-Institutional Division, in his individual and official capacities; JANIE M. COCKRELL, Director-Texas Department of Criminal Justice-Institutional Division, in her individual and official capacities; ROCHELLE MCKINNEY, Chief of Professional Standards for University of Texas Medical Branch and Texas Department of Criminal Justice-Institutional Division, in her individual and official capacities; PRISCILLA DALY, Regional Director-Eastham Unit, in her individual and official capacities, DAVID SWEETIN, Assistant Warden-Eastham Unit, in his individual and official capacities,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:02-CV-115

Before GARWOOD, WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

David White appeals the dismissal of his 42 U.S.C. § 1983 claims as frivolous. He argues that defendants Charles Hester and Tracy McClin violated his due process rights during his disciplinary proceeding; that the magistrate judge abused her discretion in denying appointment of counsel; and that his factual allegations support a claim of deliberate indifference to his paranoid schizophrenia.

White has not shown that the result of his disciplinary proceeding has been overturned or declared invalid, and he therefore cannot use 42 U.S.C. § 1983 as a vehicle to challenge alleged due process violations arising from those proceedings. See Clarke v. Stalder, 154 F.3d 186, 189 (5th Cir. 1998) (en banc). Consequently, he has demonstrated no error in the dismissal of defendants Hester and McClin.

The magistrate judge did not abuse her discretion in denying White appointment of counsel. See Castro Romero v. Becken, 256 F.3d 349, 353-54 (5th Cir. 2001). White gave lucid and coherent testimony at the Spears² hearing and was able to articulate his claims.

Finally, White has not alleged facts that support a claim of deliberate indifference to his medical condition. The gravamen of White's complaint is that he received inappropriate psychiatric medications and that his medical condition would be better treated in the Skyview Unit. Such a claim amounts to a

² Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

disagreement over the type of psychiatric treatment afforded him and, thus, is legally insufficient to establish a constitutional deprivation. See Norton v. Dimazana, 122 F.3d 286, 292 (5th Cir. 1997).

White's appeal is without arguable merit and is dismissed. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). White is informed that the dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g), in addition to the strike for the district court's dismissal. See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). We caution White that once he accumulates three strikes, he may not proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g). White should review any pending appeals and withdraw any that are frivolous.

APPEAL DISMISSED; THREE-STRIKES WARNING ISSUED.