

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10187
Conference Calendar

WAYNE MORRIS REEVES, JR.,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director
Texas Department of Criminal
Justice, Institutional Division,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:93-CV-311
- - - - -
(September 23, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Wayne Morris Reeves, Jr., moves this Court for leave to supplement the record on appeal. "We will not ordinarily enlarge the record on appeal to include material not before the district court." United States v. Flores, 887 F.3d 543, 546 (5th Cir. 1989). Reeves also moves for leave to file a supplemental complaint. It is not the function of an appellate court to

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

entertain such motions. See Fed. R. Civ. P. 1, 15. The motions are DENIED.

Reeves challenges the dismissal for frivolousness of his civil rights complaint. An in forma pauperis complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). We review for abuse of discretion. Id., 112 S. Ct. at 1734.

Three issues presented on appeal, instances of unnecessary force against other inmates, the validity of the TDCJ use-of-force plan, and violations of TDCJ employee rules, were not raised in the district court. This Court need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 320, 321 (5th Cir. 1991). Reeves acknowledges that these issues are not properly before this Court, and he requests that we nevertheless address these issues. His motions are DENIED.

Reeves bases his complaint upon alleged constitutional violations: unnecessary use of force and deliberate indifference to his medical care by the named defendants. Under the facts as alleged in the complaint, the defendants never used physical force against Reeves, and one officer arranged the rescheduling of the missed medical appointment. Thus, the facts do not amount to allegations of constitutional violations. See Farmer v. Brennan, ___ U.S. ___, 114 S. Ct. 1970, 1979, 128 L. Ed. 2d. 811

(1994) (defining "deliberate indifference" for Eighth Amendment purposes); Hudson v. McMillian, ___ U.S. ___, 112 S. Ct. 995, 1000, 117 L. Ed. 2d 156 (1992) (excluding "de minimis uses of physical force" from the prohibition of cruel and unusual punishment). Further, the verbal threats and name-calling by prison guards do not amount to a constitutional violation. See Lynch v. Cannatella, 810 F.3d 1363, 1376 (5th Cir. 1987).

In light of the facts as alleged by Reeves, his civil rights claims presented to the district court and to this Court are patently frivolous. See Denton, 112 S. Ct. at 1733. The appeal is frivolous. See 5th Cir. R. 42.2. Reeves is admonished that if another frivolous filing by him is brought to the attention of this Court, we shall consider the full range of sanctions, including directing all district clerks of court in this circuit to reject any filing from him unless he first receives the specific permission to make such filing from a district judge of the subject district or from an active judge of this Court.

APPEAL DISMISSED. MOTIONS DENIED. Admonition issued.