

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10198
Summary Calendar

MOSES CARROLL,

Plaintiff-Appellant,

versus

JIM BOWLES, Sheriff,
Dallas County, Texas ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:93-CV-799-BC)

March 16, 1995

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellant Moses Carroll, incarcerated at the Dallas County jail before he became an inmate of the TDCJ, sued Dallas County sheriff Bowles and unknown employees of the jail's health department with complaints relating to his status as an HIV-positive prisoner. The case was tried to a magistrate judge, who

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

entered findings that decisively undermined Carroll's claims. Nevertheless, he has appealed. We find no error and affirm.

Carroll asserts that he was with unconstitutional deliberate indifference denied adequate care while incarcerated at the Dallas County jail. The district court found, contrary to Carroll's assertions, that he did not inform the jail personnel of any health problem upon his admission in October, 1992. It was not until April 1993, after he had been sentenced as a habitual offender, that a court clerk notified the jail office that Carroll had admitted in open court to being HIV-positive. When the jailers found out about his condition, they scheduled appointments at Parkland Hospital, but Carroll was not able to appear for those appointments because he was transferred about that time to TDCJ, which then became responsible for his medical care. Carroll offers no argument on appeal save his own assertions that the jail personnel were aware of and deliberately indifferent to his medical condition while he was in Dallas. What the jail officials did not know of, they can hardly be faulted for having failed to treat.

Carroll mentions other allegations that he has waived by failure to produce evidence at trial. These allegations are that he should have been given a physical exam to determine whether he had HIV and that he was discriminated against because of his handicap and contagiousness. For the first time on appeal, Carroll asserts a claim regarding overcrowded conditions in the Dallas County jail. This too, is waived. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Carroll's motion to appeal in forma pauperis is granted; his request for court-appointed counsel in the trial court and in this court is correctly denied; this case did not present "exceptional circumstances" either for purposes of trial or appeal. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

The judgment of the district court is AFFIRMED.