

FILED
United States Court of Appeals
Tenth Circuit

JAN 16 1990

ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

ARLAN GENE REYNOLDSON,)
)
Plaintiff-Appellant,)
)
v.)
)
OFFICER SMITH, SGT; DUANE)
SHILLINGER,)
)
Defendants-Appellees.)

No. 89-8068
(D.C. No. Misc. 89-052)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **SEYMOUR, TACHA, and EBEL**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Arlan Gene Reynoldson appeals the district court's dismissal with prejudice of his 42 U.S.C. § 1983 claim alleging cruel and unusual punishment and deliberate indifference to medical needs in violation of the eighth amendment, U.S. Const. amend. VIII, as applied to the states through the fourteenth amendment, U.S.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Const. amend. XIV. We hold that Reynoldson has stated a claim under section 1983 and reverse.

Reynoldson's principal contention is that the prison officials were deliberately indifferent to his medical needs when he suffered from an adverse reaction to medication. Specifically, Reynoldson alleges, which we accept as true for purposes of this appeal, that he informed Officer Smith of his reaction and that he thought he was having a heart attack; Officer Smith represented that he had "told" the infirmary, but in fact did not. Reynoldson relies on Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981), in support of his contention.

We agree with Reynoldson that he has stated a cause of action for cruel and unusual punishment under the eighth and fourteenth amendments. The Supreme Court, in Estelle v. Gamble, 429 U.S. 97, 104-05 (1976), held that prison guards may act with deliberate indifference "in intentionally denying or delaying access to medical care." Accepting the complaint's allegations as true, Reynoldson has alleged sufficient facts to support an allegation that Officer Smith deliberately did not inform the infirmary of Reynoldson's seizure. In Meade v. Grubbs, 841 F.2d 1512 (10th Cir. 1988), a pretrial detainee alleged that he suffered chest pains, felt faint, and that the guards told him that they had sent for help but none ever came. We held in that case that Meade had stated a cause of action. The instant situation is nearly identical. Reynoldson's allegations that Officer Smith acted with deliberate indifference toward his serious medical needs are

sufficient to state a cause of action. The district court erred by dismissing for failure to state a claim.

The certificate of probable cause and motion to proceed in forma pauperis are GRANTED. The judgment of the district court is REVERSED and the cause is REMANDED for further proceedings in accordance with this opinion. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge