

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth circuit

DEC 13 1990

ROBERT L. HOECKER
Clerk

BARRY TURNER,
Plaintiff-Appellant,
v.
RAY ROBERTS, FRANCIS T. SCOTT,
STEVE DAVIS, MIKE HAYDEN,
Defendants-Appellants.

No. 90-3147
(D.C. No. 90-3133-S)
(D. Kan.)

ORDER AND JUDGMENT*

Before LOGAN, SEYMOUR, and TACHA, 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.

Plaintiff-appellant Barry Turner appeals a district court order denying his claim under 42 U.S.C. § 1983 for injuries received as a prisoner while repairing a fan in the Kansas State Penitentiary. On appeal, Turner argues the district court erred in finding he failed to meet the requirements for a cause of

* 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.

action under section 1983 because he did not demonstrate a violation of any federal constitutional right. We affirm.

Turner was requested to oil and lube a duct fan by a correctional supervisor at Kansas State Penitentiary. While repairing the fan, Turner was hit on the top of his head by the blades. The wound required forty-six stitches.

Turner contends the correctional supervisor violated 42 U.S.C. § 1983 because he failed to instruct Turner on how to perform the job safely, failed to supervise him in leaving the area, and failed to perceive he was injured. He also contends the defendants violated section 1983 in failing to secure the fan properly by installing protective shields. Section 1983 provides that any person who, under color of law, deprives another person of "any rights, privileges, or immunities secured by the Constitution and laws" is liable to the injured party. 42 U.S.C. § 1983. Although infliction of harm by prison authorities can constitute a claim under section 1983, the facts of this case do not rise to the level of a constitutional violation. See, e.g., Wright v. Collins, 766 F.2d 841, 849 (4th Cir. 1985) (official's order that inmate use allegedly unsafe ladder was at most negligence and does not rise to level of constitutional violation); Major v. Benton, 647 F.2d 110, 113 (10th Cir. 1981) (death resulting from cave-in of sewer ditch due to negligent action of prison official does not raise a constitutional claim). If Turner states a claim at all, his complaint about the actions of the correctional supervisor is one of negligence for which there are adequate remedies under state tort law. We hold Turner

fails to state a claim based on section 1983 because there has been no constitutional violation.

Because we find Turner has not advanced a reasoned argument on either the law or facts in support of his claim, see Coppedge v. United States, 369 U.S. 438 (1962); Ragan v. Cox, 305 F.2d 58 (1962), we DENY the motion to proceed in forma pauperis and DISMISS the appeal. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge