

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth circuit

APR 22 1991

CLYDE C. GOMM,

Plaintiff-Appellant,

v.

GARY DELAND, Director, Utah State
Department of Corrections; GERALD
COOK, Warden, Utah State Prison; BLEN
FREESTONE, Medical Director; JOHN
MIDDLETON, M.D.; ERIC CALL, Nurse
Practitioner; LEONARD HIGLEY; CAPT.
KARL BARTELL; MARION PAINTER; ROGER
BURNETT; RONALD BENSON; and CAROL
HORLACHER,

Defendants-Appellees.

ROBERT L. HOECKER
Clerk

No. 90-4032
(D.C. No. 86-C-887A)
(D. Utah)
(729 F. Supp. 767)

ORDER AND JUDGMENT*

Before ANDERSON, TACHA, Circuit Judges, and KANE,** District
Judge.

**Honorable John L. Kane, Senior District Judge, United States
District Court for the District of Colorado, sitting by
designation.

After examining the briefs and appellate record, this panel
has determined unanimously that oral argument would not materially

* 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.

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 appeals from an adverse judgment entered by the district court following a bench trial of his deliberate indifference claims brought under 42 U.S.C. § 1983 and the eighth and fourteenth amendments. The district court's lengthy opinion, reviewing the voluminous evidentiary record and incorporating extensive findings pursuant to Fed. R. Civ. P. 52, is published at Gomm v. DeLand, 729 F. Supp. 767 (D. Utah 1990).

Plaintiff argues on appeal that the district court erred in determining that defendants did not act with deliberate indifference in connection with the care and treatment afforded plaintiff for his medical problems while an inmate at the Utah State Prison. Since deliberate indifference is a question of fact, see, e.g., Liscio v. Warren, 901 F.2d 274, 276 (2d Cir. 1990); Greason v. Kemp, 891 F.2d 829, 835 (11th Cir. 1990); Ortiz v. City of Imperial, 884 F.2d 1312, 1314 (9th Cir. 1989), we review the district court's determination only for clear error, see Anderson v. City of Bessemer City, 470 U.S. 564, 573-74 (1985); Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 501 (1984). Upon review of the district court's decision in light of the arguments and authorities urged by the parties, we are not left with a "definite and firm conviction that a mistake has been committed," Anderson, 470 U.S. at 573, and, accordingly, affirm.

The judgment of the United States District Court for the District of Utah is AFFIRMED.

Entered for the Court

Deanell Reece Tacha
Circuit Judge