

FILED
United States Court of Appeals
Tenth Circuit

OCT 11 1990

ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

TERRY LYNN RHINE,
Plaintiff-Appellant,
v.
ALFRED RODGERS, H.E. BRITTON,
BILL BUCHANN, and TIM SCOTT,
Defendants-Appellees.

No. 90-6176
(D.C. No. CIV-89-2149-R)
(W.D. Oklahoma)

ORDER AND JUDGMENT*

Submitted on the Briefs:

Before MCKAY, MOORE, and BRORBY, Circuit Judges.

This is an appeal from a summary judgment in favor of defendants entered by the district court in a pro se § 1983 action. Plaintiff contends summary judgment should not have been granted because the district court "took sides with the

*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.

defendants, and dismissed plaintiff's complaint." Our review of the record reveals no error, and we affirm.

The kernel of Mr. Rhine's complaint is that while in jail, following conviction in a state case, he did not receive "proper" medical care. As noted by the district court, Mr. Rhine did receive the consultation of one doctor and examination by another, both of whom prescribed medication for him. Mr. Rhine's complaint is that he did not receive that attention soon enough; thus, he contends the care was not "proper." We agree with the district court that the facts alleged fail to demonstrate plaintiff was subjected to the deliberate indifference to his medical needs that would support a claim. Estelle v. Gamble, 429 U.S. 97, 106 (1976).

Plaintiff also alleged that while he was confined to his bed, he asked for assistance to use a bedpan. He contended he was ignored and consequently defecated upon himself. He alleged when the sheriff discovered him in this condition he ordered deputies to wash him with a stream of cold water from a hose. Defendants claimed Mr. Rhine did not ask for assistance, and he was washed with warm water. The district court held, "[e]ven assuming plaintiff's version of the facts to be true, the physical abuse alleged in this case . . . is insufficient to state a constitutional deprivation." With this conclusion, we agree. Rhodes v. Chapman, 452 U.S. 337, 346 (1981); Gillihan v. Shillinger, 872 F.2d 935, 941 (10th Cir. 1989).

Mr. Rhine also contends that certain of the defendants threatened him with bodily harm while he was in a debilitated

condition. The district court correctly held that mere threats do not constitute cruel and unusual punishment. Collins v. Cundy, 603 F.2d 825, 827 (10th Cir. 1979).

Mr. Rhine contends the district court disbelieved him, and consequently ruled in favor of the defendants. That is not an accurate portrayal of the occurrences in the district court. In ruling upon the cruel and unusual punishment claims of the complaint, the court held as a matter of law the facts asserted by Mr. Rhine did not rise to the level of a constitutional violation. The court pointed out that Mr. Rhine did not controvert the defendants' evidence that he actually received medical attention. The court's conclusions on the other claims were reached without resolving the incidental factual disputes relating to any of them. Moreover, in ruling on those issues, as noted above, the court even accepted plaintiff's version of the facts and still found the claim meritless.

AFFIRMED.

Entered for the Court

John P. Moore
Circuit Judge