

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10314
Conference Calendar

JOHNNY JOHNSON,

Plaintiff-Appellant,

versus

J. ORTIZ, Prison Guard, Roach Unit,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:97-CV-124
- - - - -

August 20, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Johnny Johnson, Texas inmate # 447104, appeals the dismissal of his civil rights complaint filed pursuant to 42 U.S.C. § 1983 as frivolous. He argues that the defendant failed to protect him from a shoulder injury and from emotional distress he suffered during and after a prison riot which was precipitated by a racial fight between two inmates.

Defendant Ortiz's failure to foresee a full-blown riot may constitute negligence, but does not constitute deliberate

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

indifference to Johnson's safety. Farmer v. Brennan, 511 U.S. 825, 833 (1994); Oliver v. Collins, 914 F.2d 56, 60 (5th Cir. 1990). Given that his shoulder injury was de minimis, Johnson is not entitled to recover for emotional distress he allegedly suffered during and after the riot. Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). Accordingly, the district court's dismissal of Johnson's suit was not an abuse of discretion. See 28 U.S.C. § 1915(e)(2)(B)(i); Norton v. Dimazana, 122 F.3d 286, 291 (5th Cir. 1997).

The judgment of the district court is AFFIRMED. Johnson's motion for the appointment of counsel is DENIED. See Cooper v. Sheriff, Lubbock County, Tex., 929 F.2d 1078, 1084 (5th Cir. 1991).