

APPENDIX - A

United States Court of Appeals
for the Fifth Circuit

United States Courts
Southern District of Texas
FILED

November 09, 2022

Nathan Ochsner, Clerk of Court

No. 20-20434
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 3, 2022

Lyle W. Cayce
Clerk

WILLIE T. WASHINGTON,

Plaintiff—Appellant,

versus

UTMB; JOHN SEALY HOSPITAL GALVESTON,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-177

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:*

Willie T. Washington, Texas state prisoner # 000856, appeals the district court's dismissal, with prejudice, of his 42 U.S.C. § 1983 civil suit for failure to state a claim upon which relief could be granted. In his complaint, Washington alleged that officials committed malpractice and were

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-20434

deliberately indifferent to his serious medical needs when they performed an unnecessary surgery after his diagnosis with prostate cancer. Washington's motions to file two supplemental briefs are GRANTED.

We review the dismissal of a complaint for failure to state a claim de novo. *See Coleman v. Lincoln Par. Det. Ctr.*, 858 F.3d 307, 308-09 (5th Cir. 2017); *Legate v. Livingston*, 822 F.3d 207, 209-10 (5th Cir. 2016). Washington does not establish that the defendants were deliberately indifferent to his serious medical needs by showing that they "refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Domino v. Texas Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001) (internal quotation marks and citation omitted). He argues that medical staff manipulated him into getting surgery without discussing the merits of radiation treatment and that, as a result, he suffered from serious side effects. However, he does not provide any facts to suggest that those medical officials were (1) "aware of facts from which an inference of an excessive risk to [Washington's] health or safety could be drawn" and (2) "actually drew an inference that such potential for harm existed." *Rogers v. Boatright*, 709 F.3d 403, 407-08 (5th Cir. 2013) (internal quotation marks and citation omitted).

Washington's mere disagreement with the course of treatment provided and his conclusional insistence that radiation treatment would have been a better option is not sufficient to show deliberate indifference, *see Gibson v. Collier*, 920 F.3d 212, 220 (5th Cir. 2019); *Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006); *Domino*, 239 F.3d at 756, which requires wanton, or reckless, disregard, *see Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985). Accordingly, the judgment of the district court is AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

United States Courts
Southern District of Texas
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USDC No. 4:20-CV-177

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.



Certified as a true copy and issued
as the mandate on Nov 09, 2022

Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 09, 2022

Mr. Nathan Ochsner
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 20-20434 Washington v. UTMB
USDC No. 4:20-CV-177

Dear Mr. Ochsner,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Shawn D. Henderson, Deputy Clerk
504-310-7668

Cc (letter only):
Mr. Willie T. Washington

APPENDIX - B

ENTERED

July 09, 2020

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WILLIE T. WASHINGTON,
TDCJ# 000856,

Plaintiff,

v.

U.T.M.B., et al.,

Defendants.

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CIVIL ACTION NO. H-20-0177

MEMORANDUM OPINION
AND ORDER OF DISMISSAL

Plaintiff filed a civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that the defendants are deliberately indifferent to his serious medical needs. *See* Dkt. #6. The Court has an obligation to dismiss the case if it determines that the action is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B).

I. Background¹

A biopsy taken in 2016 at the University of Texas Medical Branch in Galveston (“UTMB”) showed that Plaintiff had grade three prostate cancer and that his medical providers wanted to observe the cancer “for awhile.” *See* Dkt. #6 at 2. Plaintiff questioned that determination and asked what he should do, and the

¹ The facts below come from Plaintiff’s Complaint and More Definite Statement. *See* Dkt. ##6, 11.

medical provider recommended surgery. The medical provider said that erection loss or urine control was rare when Plaintiff asked. The medical provider offered him a form to sign and told him to indicate that he did not want radiation therapy. Radiation therapy was never offered or discussed further.

Upon return to UTMB, an MRI showed that his cancer progressed to stage four. Plaintiff returned to his unit and scheduled for surgery on October 31, 2016. On that date, Plaintiff asked the medical attendant if he would have urine control and an erection after the surgery. The attendant responded in the affirmative. Plaintiff had surgery and upon waking up did not have control of his urine and was unable to maintain an erection. Plaintiff says he has not recovered.

Plaintiff says that his medical provider misled him into having the surgery and that he is certain he did not need it. Plaintiff says that he would have “been fine with radiation and [being] watched by unit provider by blood-work.” Plaintiff offers medical records to support his claims but does not give the name of the medical provider that treated him or suggested surgery.

II. Discussion

The statute of limitations on claims brought under § 1983 is determined by the forum state’s limitations period. *See Wallace v. Kato*, 549 U.S. 384, 387 (2007). In Texas, a plaintiff must bring personal injury claims within two years from the date the cause of action accrued. TEX. CIV. PRAC. & REM. CODE § 16.003.

Plaintiff's claim accrued in 2016, when Plaintiff alleges that he was misled by his medical provider and had the allegedly unnecessary surgery. Because Plaintiff filed this complaint on January 9, 2020, Plaintiff filed his complaint past the date the statute of limitations ran. The claims should be dismissed.

However, even if the statute of limitations had not run on Plaintiff's claims, the claims should be dismissed because he fails to state a claim for which relief may be granted. To establish deliberate indifference, Plaintiff must first demonstrate a serious medical need. *Gobert v. Caldwell*, 463 F.3d 339, 345 n.12 (5th Cir. 2006). Second, he must show that a defendant acted with deliberate indifference to that medical need. *Id.* In showing deliberate indifference, Plaintiff must show that the defendant: (1) was aware of facts from which the inference could be drawn that a substantial risk of serious harm exists; and (2) also subjectively draw the inference. *Williams v. Hampton*, 797 F.3d 276, 281 (5th Cir. 2015). "Actions and decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference." *Alton v. Tex. A & M Univ.*, 168 F.3d 196, 201 (5th Cir. 1999). To reach the level of deliberate indifference, official conduct must be "wanton," which is defined to mean "reckless." *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985). Unsuccessful medical treatment, acts of negligence, or medical malpractice do not constitute deliberate indifference. *Gobert*, 463 F.3d at 347. Inadvertent failure to provide

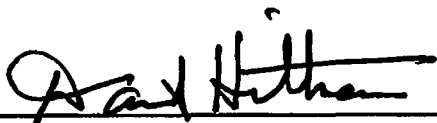
adequate medical care or treatment does not constitute an unnecessary and wanton infliction of pain. *Gibson v. Collier*, 920 F.3d 212, 220 (5th Cir. 2019).

Plaintiff's allegations, and supporting documentation, shows that he received medical care for his cancer. Plaintiff does not allege that the medical treatment offered was unsuccessful. Instead, Plaintiff merely disagrees with the ultimate treatment based on the unfortunate side-effects that he experiences. Moreover, Plaintiff's allegations are rife with disagreements about treatment and are largely conclusory allegations that his chosen treatment would have been better based on an unsubstantiated belief that UTMB wanted to use him as a human guinea pig for medical students.

III. Conclusion

The complaint is **DISMISSED** with prejudice for failing to state a claim for which relief may be granted. This dismissal shall act as a strike for the purposes of § 1915(g). The Clerk's Office is directed to provide a copy of this Order to the Plaintiff and the Manager of the Three Strikes List at Three_Strikes@txs.uscourts.gov.

SIGNED at Houston, Texas, on July 7, 2020.



DAVID HITTNER
UNITED STATES DISTRICT JUDGE

ENTERED

July 09, 2020

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WILLIE T. WASHINGTON,
TDCJ# 000856,

Plaintiff,

v.

U.T.M.B., et al.,

Defendants.

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CIVIL ACTION NO. H-20-0177

FINAL JUDGMENT

Willie T. Washington's civil rights complaint pursuant to 42 U.S.C. § 1983
is dismissed with prejudice.

SIGNED at Houston, Texas, on July 7, 2020.



DAVID HITTNER
UNITED STATES DISTRICT JUDGE

ENTERED

October 20, 2020

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WILLIE T. WASHINGTON,
TDCJ# 000856,

Plaintiff,

v.

U.T.M.B., et al.,

Defendants.

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CIVIL ACTION NO. H-20-0177

ORDER

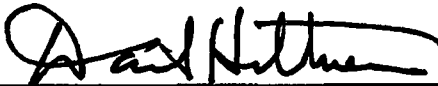
The Court dismissed Plaintiff Willie T. Washington's complaint because he failed to state a claim for relief. The Court found that the complaint was filed past the applicable statute of limitations and that, even if it were not filed past the statute of limitations, Plaintiff did not allege facts that showed he is entitled to relief. Plaintiff moves to proceed *in forma pauperis* on appeal. *See* Dkt. ##26, 29. The Court denies the motions because the appeal is not taken in good faith pursuant to Rule 24 of the Appellate Rules of Civil Procedure.

Good faith is demonstrated when an appellant seeks review of an issue that is not frivolous and involves "legal points [that are] arguable on their merits[.]" *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Plaintiff seeks and appeal because, "the judge in this matter has not given reason for the dismissal with prejudice of plaintiff[']s civil action." *See* Dkt. #16. Plaintiff further alleges that

the Court determined, “[o]nly that plaintiff violated rule 42[] U.S. [§] 1983 which states that ‘declaration’ was the rule.” *Id.* Plaintiff also says that the Court is prejudiced against him. *Id.* As discussed above, the Court dismissed his complaint pursuant to the statute of limitations and for Plaintiff’s failure to allege facts that constitute deliberate indifference to his serious medical needs. While the Court acknowledges his displeasure in the ultimate result, Plaintiff does not bring a non-frivolous issue on appeal because he does not identify a reason for appeal that comports with the record in his case.

Therefore, Plaintiff’s motions to proceed *in forma pauperis* on appeal (Dkt. ##26, 29) are **DENIED**. Plaintiff must pay the full appellate filing fee of \$505. Plaintiff may move to proceed *in forma pauperis* with the appellate court. If the appellate court grants the motion, an initial filing fee of \$50 is appropriate based on Plaintiff’s inmate trust fund account sheet. The entity having custody of Plaintiff, would then collect twenty percent of all deposits into Plaintiff’s trust fund account and forward this amount to the Court until the \$505 filing fee is paid.

SIGNED at Houston, Texas, on Oct 19, 2020.



DAVID HITTNER
UNITED STATES DISTRICT JUDGE

APPENDIX - C

United States Court of Appeals
for the Fifth Circuit

No. 20-20434

WILLIE T. WASHINGTON,

Plaintiff—Appellant,

versus

UTMB; JOHN SEALY HOSPITAL GALVESTON,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-177

ON PETITION FOR REHEARING

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**