

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Dinkins v. Lara

No. 19-40809, United States Court of Appeals for the Fifth Circuit (March 3, 2021)

SUMMARY

****Summary:**** In this unpublished Bivens action, a federal prisoner appealed summary judgment for failure to exhaust administrative remedies regarding inadequate medical care for diabetes and other prison conditions. The Fifth Circuit affirmed, holding that the prisoner's conclusory claim that officials impeded grievances lacked evidence, and that the district court properly reviewed untimely objections and declined to appoint counsel absent exceptional circumstances. Key topics: Bivens, exhaustion of administrative remedies (28 C.F.R. §§ 542.13, 542.14(a), 542.15(a),(b)), summary judgment, prison medical care, appointment of counsel.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Davis; Stewart; Dennis
JURISDICTION	Federal
DECIDED	March 3, 2021
DOCKET	19-40809
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from grant of summary judgment for failure to exhaust administrative remedies.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Unpublished
PARTIES	James Dinkins v. Frank Lara, Warden; Doctor Sreedhar Polavarapu, Clinical Medical Doctor; Stephen Henderson; Rebecca Mallet; Shane Salem; John Doe, Chief of Psychology Department; Shara Johnson

TOPICS

- civil rights
- prisoners rights
- exhaustion of remedies
- summary judgment
- standard of review

PRACTICE AREAS

- Prisoner Civil Rights
- Bivens

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment for failure to exhaust administrative remedies.
2. Whether the district court erred in not reviewing Dinkins's objections to the magistrate judge's report.
3. Whether the district court erred in denying motions to appoint counsel.

HOLDINGS

1. The district court did not err in granting summary judgment for failure to exhaust administrative remedies.
2. The district court reviewed the objections and found them without merit, so no error.
3. The district court did not abuse its discretion in denying appointment of counsel because no exceptional circumstances were present.

KEY QUOTATIONS

"We review the grant of summary judgment de novo, applying the same standards as the district court." (1)

"Based upon the record evidence detailing Dinkins's filing of grievances, the district court did not err in granting the defendants' motions for summary judgment for failure to exhaust administrative remedies." (2)

"Dinkins's case did not present the type of exceptional circumstances that warranted the appointment of counsel." (2)

FACTUAL BACKGROUND

Dinkins, a federal prisoner, filed a Bivens action alleging inadequate medical care for his diabetes and other prison conditions. The defendants moved for summary judgment based on failure to exhaust administrative remedies.

PROCEDURAL HISTORY

Dinkins filed a Bivens complaint against prison officials. The district court granted defendants' motions for summary judgment based on failure to exhaust administrative remedies. Dinkins appeals.

DISPOSITION

affirmed

CASES CITED

- Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971)
- Dillon v. Rogers, 596 F.3d 260, 266 (5th Cir. 2010)
- Cupit v. Jones, 835 F.2d 82, 86 (5th Cir. 1987)

OPINION

PER CURIAM.

Case: 19-40809 Document: 00515764858 Page: 1 Date Filed: 03/03/2021 United States Court of Appeals for the Fifth Circuit United States Court of Appeals Fifth Circuit FILED March 3, 2021 No. 19-40809 Lyle W. Cayce Summary Calendar Clerk James Dinkins, Plaintiff—Appellant, versus Frank Lara, Warden; Doctor Sreedhar Polavarapu, Clinical Medical Doctor; Stephen Henderson; Rebecca Mallet; Shane Salem; John Doe, Chief of Psychology Department; Shara Johnson, Defendants—Appellees.

Appeal from the United States District Court for the Eastern District of Texas USDC No. 1:16-CV-504 Before Davis, Stewart, and Dennis, Circuit Judges. Per Curiam:* James Dinkins, federal prisoner # 05235-748, filed a complaint under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), against Warden Frank Lara and other prison officials in which he raised a myriad of * 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.

Case: 19-40809 Document: 00515764858 Page: 2 Date Filed: 03/03/2021 No. 19-40809 claims of inadequate medical care for his diabetes and other challenges to prison conditions. He appeals the district court's grant of the defendants' motions for summary judgment based on failure to exhaust administrative remedies.

We review the grant of summary judgment de novo, applying the same standards as the district court. *Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir. 2010). A district court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Although Dinkins claims that prison officials impeded his ability to file grievances, he provides no support or evidence for that conclusional assertion that would refute the district court's finding regarding exhaustion. Based upon the record evidence detailing Dinkins's filing of grievances, the district court did not err in granting the defendants' motions for summary judgment for failure to exhaust administrative remedies.

See 28 C.F.R. § 542.13; 28 C.F.R. § 542.14(a); 28 C.F.R. § 542.15(a), (b); *Dillon*, 596 F.3d at 266. In addition, Dinkins argues that the district court erred in not reviewing his objections to the magistrate judge's report.

However, the district court, while deeming the objections untimely, nevertheless reviewed them and determined that they were without merit. Finally, Dinkins also challenges the district court's denial of his motions to appoint counsel.

However, Dinkins's case did not present the type of exceptional circumstances that warranted the appointment of counsel. See *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987). The district court thus did not abuse its discretion in declining to appoint counsel. *Id.* AFFIRMED. 2