

APS-61

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-1677

ALFONZO SALLEY,
Appellant

v.

JOHN DOE;
THE BOROUGH OF NORRISTOWN;
THE MONTGOMERY COUNTY SHERIFF DEPT.

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Received and Filed

11-29-00
Marcia M. Waldron,
Clerk

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 99-03119)
District Judge: Honorable Louis C. Bechtle

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
November 9, 2000

Before: SLOVITER, BARRY AND AMBRO, CIRCUIT JUDGES

JUDGMENT

This case came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted for possible dismissal under 28 U.S.C. §1915(e)(2)(b). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the appeal is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) for lack of legal merit. All of the above in accordance with

the opinion of this Court.

ATTEST:

Marcia M. Alden

Clerk

DATED: November 29, 2000

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UNREPORTED-NOT PRECEDENTIAL

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OPINION

PER CURIAM

Appellant, Alfonso Salley, appeals the District Court's order dismissing his civil rights complaint filed pursuant to 42 U.S.C. § 1983 against John Does, the Borough of

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Norristown and the Montgomery County Sheriff's Department. Appellant's complaint arose out of an accident that occurred on April 7, 1998. Appellant alleges that, while handcuffed and in leg irons, he attempted to step off the bus which the Montgomery County Sheriff's Office had used to transport him when he "got caught up" and fell head first onto the sidewalk. As a result of this fall, Salley claims to have suffered head, neck and spinal cord injuries. Additionally, despite the fact that appellant did not name any prison officials as defendants, he asserts that officials at S.C.I. Greene where he is currently incarcerated are denying him showers, exercise and access to the courts, and that officials at his previous place of confinement, S.C.I. Huntingdon, have failed to forward his legal materials thereby interfering with his access to the courts. Salley sought relief in the form of monetary damages and "appropriate medical care."

Despite having construed the complaint liberally, the District Court concluded that it was nonetheless compelled to dismiss it as legally frivolous. As set forth in its Memorandum Opinion, the District Court determined that the Borough of Norristown and the Montgomery County Sheriff's Department were not subject to liability under 42 U.S.C. § 1983 insofar as Salley failed to allege any unlawful action on their part that was taken pursuant to the municipality's policies, practices, customs, regulations or enactments, see Monell v. New York City Dep't of Social Serv., 436 U.S. 658 (1978), or that any such municipal practice was the cause of the injuries he suffered as a result of his fall from the transport bus. See Bielevicz v. Dubinon, 915 F.2d 845, 850 (3d Cir. 1990).

Moreover, the claims against the two John Does were dismissed because Salley did not allege, nor did the facts of the complaint suggest, that these defendants were deliberately indifferent to his safety. See Farmer v. Brennan, 511 U.S. 825 (1994); Wilson v. Seiter, 501 U.S. 294, 298 (1991). At most, the District Court concluded, the conduct of the John Does in transporting Salley amounted to negligence, not a constitutional violation actionable under § 1983. Accordingly, the District Court dismissed appellant's complaint. Because Salley had included claims related to the denial of medical care, conditions of confinement and access to the courts by prison officials from various prisons located in other judicial districts, the District Court noted that its dismissal was without prejudice to Salley's right to pursue such claims in the appropriate forum should he choose to do so.

We agree with the reasoning set forth by the District Court and find no merit to appellant's contention that the District Court should have provided him the opportunity to amend his complaint prior to dismissal where such an amendment would surely have proven futile. The same conclusion holds true with respect to Salley's contention that the District Court dismissed his complaint without providing him the address of the court having jurisdiction over his remaining claims. We cannot conclude that such an omission is reversible error given the fact that Salley's claims involve prison officials from institutions located in different judicial districts. Accordingly, having found no legal merit to this appeal, we will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B). Neitzke v.

Williams, 490 U.S. 319 (1989).

To the Clerk:

Please file the foregoing opinion.