

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-60193

United States Court of Appeals
Fifth Circuit

FILED
August 6, 2014
Lyle W. Cayce
Clerk

SHERMON OBY,

Plaintiff–Appellant,

versus

LIEUTENANT ROBERT STURDIVANT;
LIEUTENANT EDWARD THIGPIN;
OFFICER MONTGOMERY; OFFICER FOSTER,

Defendants–Appellees.

Appeals from the United States District Court
for the Northern District of Mississippi
No. 4:10-CV-92

Before DAVIS, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Shermon Oby, Mississippi prisoner #45397, claims a violation of his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Eighth Amendment rights. Proceeding *pro se* and *in forma pauperis*, he sued, pursuant to 42 U.S.C. § 1983, Lieutenant Robert Sturdivant, Lieutenant Edward Thigpen, Officer Gordy Montgomery, and Officer Tony Foster, alleging cruel and unusual punishment. He contends that the officers ordered him out of his cell and beat him for about twenty minutes, after which Oby made a sick-call request complaining of being assaulted. Two days later he was seen by a nurse who noted that Oby “had no cuts, abrasions, bruises, or any evidence of being in an altercation.”

Default judgments were entered against Montgomery and Foster. Sturdivant and Thigpen, however, answered Oby’s complaint and moved for summary judgment. In support, they attached their affidavits denying any assault; Oby’s medical records; and the affidavit of Dr. Lorenzo Cabe, who testified that those records contained no evidence of a physical assault around the time alleged. Oby submitted a response, but no additional evidence, in support of his claims.

The district court granted summary judgment and dismissed; Oby objected under Federal Rule of Civil Procedure 59(e), swearing under penalty of perjury that the registered nurse had conducted an inadequate examination. The district court denied that motion.

We have reviewed the briefs, the applicable law, and pertinent portions of the record. There is no reversible error. The summary judgment is AFFIRMED. The denial of relief under Rule 59(e) is also AFFIRMED.