

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JAN 23 2003

PATRICK FISHER
Clerk

CLARENCE WILLIAM HAIRSTON,
JR.,

Plaintiff - Appellant,

v.

SUSIE MCGUIRE, RN: Nurse 111,
Delta Correctional Center,

Defendant - Appellee.

No. 02-1445
D.C. No. 02-Z-1331
(D. Colorado)

ORDER AND JUDGMENT*

Before **KELLY, McKAY**, and **MURPHY**, Circuit Judges.

After examining Appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

This is a *pro se* state prisoner 42 U.S.C. § 1983 civil rights appeal. Mr. Hairston seeks monetary damages on his claim that Defendant was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The district court dismissed Mr. Hairston's complaint as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). Mr. Hairston appeals to this court.

Mr. Hairston suffered pain after his jaw surgery. A dentist examined him and prescribed Motrin. Defendant Nurse subsequently told Mr. Hairston that he could not take Motrin because he had been previously diagnosed with Hepatitis C. She instead recommended Tylenol. Mr. Hairston complained that he would have to pay for Tylenol and that Tylenol was not strong enough for the pain. He also claimed that he was embarrassed by the public announcement that he has Hepatitis C.

We agree with the district court that Mr. Hairston's allegations do not rise to the level of an Eighth Amendment claim. Therefore, after a thorough review of Appellant's brief and the record, and for substantially the same reasons set forth in the district court's well-reasoned September 16, 2002, Order, we hold that no relief is available to Mr. Hairston.

The decision of the trial court is AFFIRMED. Appellant's motion to proceed without prepayment of the appellate filing fee is GRANTED. We remind

Appellant that he must make partial payments on court fees and costs until such have been paid in full.

Entered for the Court

Monroe G. McKay
Circuit Judge