

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JUN 28 1999

PATRICK FISHER
Clerk

RICKEY LAVERN SHEPPARD,

Plaintiff-Appellant,

v.

JUDY OWEN, Head Nurse, Health
Administrator; MICHAEL CODY,
Warden; DENNIS COTNER, Head
Administrator; PRICILLA
DRUMMOND, Head Nurse, O.S.P.; C.
CASE, Nurse; GALE SMITH, C/O II,

Defendants-Appellees.

No. 98-7126
(E. District of Oklahoma)
(D.C. No. 97-CV-249)

ORDER AND JUDGMENT*

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

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel.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 appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Rickey L. Sheppard appeals the district court's dismissal of his civil rights complaint brought pursuant to 42 U.S.C. § 1983. In his complaint, Sheppard asserted that the defendants were deliberately indifferent to his medical needs in violation of the Eighth Amendment to the United States Constitution. In a thorough order, the district court noted that the record clearly demonstrated repeated meetings between Sheppard and prison medical staff and concluded that in light of the evidence of a "series of sick calls, examinations, diagnoses, and medication . . . it cannot be said there was 'deliberate indifference' to the prisoner's complaints." *Smart v. Villar*, 547 F.2d 112, 114 (10th Cir. 1976). Furthermore, the district court held that Sheppard's difference of opinion with the prison medical staff as to the kind and quality of medical care necessary under the circumstances could not support a claim under § 1983. *See McCracken v. Jones*, 562 F.2d 22, 24 (10th Cir. 1977).

This court has conducted a *de novo* review of the parties' briefs and contentions, the thorough district court order, and the entire record on appeal. In light of that close review, this court **AFFIRMS** for substantially those reasons

set forth in the district court's order of dismissal dated August 11, 1998.

ENTERED FOR THE COURT:

Michael R. Murphy
Circuit Judge