

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 96-10919

Summary Calendar

---

LEROY RICHARD RABER,

Plaintiff-Appellant,

versus

RODNEY L. COOPER, ET AL,

Defendants.

and

FOREST HUBBARD,

Defendant-Appellee.

---

Appeal from the United States District Court  
For the Northern District of Texas  
(1:95-CV-153)

---

May 1, 1997

Before HIGGINBOTHAM, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Richard Raber appeals the dismissal of his § 1983 action against Forest Hubbard in his official capacity based on Hubbard's Eleventh Amendment Immunity, and requests leave to proceed in forma

---

\*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

pauperis. We dismiss Cooper's appeal for lack of any arguable merit. See 28 U.S.C. § 1915(e)(2) ("[T]he court shall dismiss the case at any time if the court determines that . . . the action or appeal is frivolous . . . [or] fails to state a claim on which relief may be granted."). Raber cannot put forward a § 1983 claim for a false disciplinary charge unless he pleads and shows a favorable termination, reversal, or setting aside of the disciplinary finding. Woods v. Smith, 60 F.3d 1161, 1165 n. 16 (5th Cir. 1995); Heck v. Humphrey, 114 S.Ct. 2364 (1994).

Appeal DISMISSED.

The motion to proceed in forma pauperis is hereby DENIED AS MOOT.