

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-20261  
Conference Calendar

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DANNY HENRY,

Plaintiff-Appellant,

versus

K. COBBS, Officer;  
T. FITCH, Officer,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-97-CV-1164  
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August 27, 1999

Before KING, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Danny Henry, Texas prisoner # 688114, appeals the district court's dismissal of his 42 U.S.C. § 1983 lawsuit as frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). He renews his claim that the defendant prison guards verbally threatened and intimidated him, in violation of the Eighth Amendment. He additionally asserts, for the first time on appeal, that he is entitled to relief under the Texas Tort Claims Act.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Henry's claims are not actionable under § 1983. Verbal threats and name-calling by prison guards do not amount to a constitutional violation. See Bender v. Brumley, 1 F.3d 271, 274 n.4 (5th Cir. 1993)(pretrial detainee case); Lynch v. Cannatella, 810 F.3d 1363, 1376 (5th Cir. 1987). Section 1983 is not the appropriate vehicle for Henry's newly-raised state-law tort claim. See Johnson v. Dallas Indep. Sch. Dist., 38 F.3d 198, 200 (5th Cir. 1994).

Because Henry did not assert a claim of a constitutional violation, the district court did not abuse its discretion in dismissing the complaint as frivolous. See Siqlar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). Henry's appeal is without arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. 5th Cir. R. 42.2.

APPEAL DISMISSED.