

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20469
Summary Calendar

GARY LYNN MORGAN,

Plaintiff-Appellant,

versus

DOUGLAS DRETKE, Warden; EARL FOX;
BILL GRAY; JERRY BARRETT,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H:97-CV-941

November 26, 1999

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Gary Lynn Morgan, Texas Prisoner No. 689634, appeals the district court's dismissal of his 42 U.S.C. § 1983 prisoner civil rights claim as frivolous after a Spears¹ hearing. All of Morgan's outstanding motions are DENIED. Morgan's allegation that he was forced to work in the utility squad after an injury is, at best, a claim of negligence; the district court thus did not abuse its discretion in dismissing the claim. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Morgan's argument that his First

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

¹Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

Amendment right to freedom of speech was violated when he was punished for sending a letter to a prison guard that "expressed his feelings" for her lacks merit. See Gibbs v. King, 779 F.2d 1040, 1045 (5th Cir. 1986). Morgan has not argued or shown that his punishment for sending the letter imposed an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." See Sandin v. Conner, 515 U.S. 472, 484 (1995); Orellana v. Kyle, 65 F.3d 29, 31 (5th Cir. 1995).

Finally, the district court did not abuse its discretion in dismissing Morgan's failure-to-protect claim as frivolous. See Davidson v. Cannon, 474 U.S. 344, 347-48 (1986); Neals v. Norwood, 59 F.3d 530, 533 (5th Cir. 1995).

AFFIRMED; ALL OUTSTANDING MOTIONS DENIED.