

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50343
Conference Calendar

JOSEPH WARREN POLK, JR.,

Plaintiff-Appellant,

versus

BILLY BURKE; CAROLYN HARRINGTON;
DAN SMITH, Sheriff,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-97-CV-72
- - - - -

February 10, 1999

Before BARKSDALE and EMILIO M. GARZA, Circuit Judges.*

PER CURIAM:**

Joseph Warren Polk, Jr., Texas inmate #805394, appeals the district court's summary judgment for the defendants. Polk has also moved for leave to supplement his reply brief and for the relief which he requested in his civil rights complaint. IT IS ORDERED that the motions are DENIED.

Our independent review of the district court's judgment is

*This matter is being decided by a quorum. 28 U.S.C. § 46(d).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

based on the appellate record and not upon consideration of any evidence which was not presented to the district court. See United States v. Flores, 887 F.2d 543, 546 (5th Cir. 1989).

We have carefully reviewed the arguments and the appellate record. For essentially the same reasons as explained by the district court in its order granting summary judgment for the defendants, see Polk v. Burke, No. W-97-CA-072 (W.D. Tex. Mar. 18, 1998), we conclude that the district court did not err in its summary-judgment determination. See Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc); Brewer v. Wilkinson, 3 F.3d 816, 825 (5th Cir. 1993).

AFFIRMED; MOTIONS DENIED.