

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20886
Conference Calendar

TIMOTHY RAY DRIVER,

Plaintiff-Appellant,

versus

WAYNE SCOTT; ROCHELLE MCKINNEY; KENT RAMSEY; PRISCILLA DALY;
MARSHALL HERKLOTZ; T. GARCIA; BELL, Captain; D. DRECKT;
E. FOX; F. CHERIAN; V. PORTER; J. AGULAR; SIMMONS, Officer;
CERVANTES,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-96-CV-1895

December 11, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Timothy Ray Driver, Texas prisoner # 663510, appeals the jury's verdict in favor of the defendants on his Eight Amendment claims brought pursuant to 42 U.S.C. § 1983. Driver argues that the evidence was insufficient to support the jury's verdict.

Driver has not presented an appealable issue. "[I]n the absence of a motion for [judgment as a matter of law], the sufficiency of the evidence supporting the jury's findings is not reviewable on appeal. Federal appellate courts simply do not

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

directly review jury verdicts." Coughlin v. Capitol Cement Co., 571 F.2d 290, 297 (5th Cir. 1978). Driver did not move for judgment as a matter of law in the district court at the close of his case or at the close of the evidence. See Serna v. City of San Antonio, 244 F.3d 479, 481 (5th Cir. 2001) ("To properly preserve review of a jury's verdict based on the sufficiency of the evidence, a party must move for judgment as a matter of law after the close of all the evidence."), cert. denied, 70 U.S.L.W. 3092 (U.S. Oct. 9, 2001) (No. 01-196). Moreover, because he did not file a second notice of appeal after the denial of his new trial motion, he has appealed only the judgment in favor of the defendants, not the district court's denial of his new trial motion. See Fed. R. Civ. P. 4(a)(4)(B)(ii). Driver has therefore not presented an issue for this court to review.

This appeal is without arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because it is frivolous it is DISMISSED. 5th Cir. R. 42.2.

APPEAL DISMISSED.