

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-20952  
Summary Calendar

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WARREN P. CANADY; ET AL,

Plaintiffs,

WARREN P. CANADY,

Plaintiff-Appellant,

versus

M.B. THALER; R.J. PARKER; C.S. STAPLES; T. MERCHANT; H. HARRIS;  
D.K. CROWLEY,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-97-CV-1680  
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May 29, 2001

Before JOLLY, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Warren P. Canady, Texas prisoner # 723784, appeals the district court's dismissal of his 42 U.S.C. § 1983 civil rights complaint for failure to state a claim. He argues that for approximately a year and a half he was denied his First Amendment right to religious freedom, because the defendants prevented him

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<sup>1</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

from attending Friday prayer services as required by his Islamic faith.

In his complaint, Canady alleged an equal protection violation, but he failed to brief the on appeal; therefore, it is waived. See *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). The district court's dismissal is AFFIRMED insofar as it relates to Canady's equal protection claim.

The district court erred when it dismissed Canady's complaint for failure to state a claim. Without drawing any conclusions regarding the merit of Canady's underlying claim, this court holds that at the very least he has alleged a First Amendment free exercise claim that should have been assessed in light of the factors outlined in *Turner v. Safley*, 482 U.S. 78 (1987). See *Green v. Polunsky*, 229 F.3d 486, 488 (5th Cir. 2000)(analyzing free exercise claim using *Turner* factors); *Beck v. Lynaugh*, 842 F.2d 759, 761 (5th Cir. 1988)(pre-*Turner* case vacating district court dismissal as frivolous on prisoners' religious freedom claim that he was excluded from chapel service while in administrative segregation). Accordingly, the district court's order of dismissal is VACATED with respect to Canady's free exercise claim, and the case is REMANDED to the district court for further consideration.

AFFIRMED IN PART; VACATED IN PART AND REMANDED.