

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-50396  
Summary Calendar

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STEVEN LEE GREGORY,

Plaintiff-Appellant,

versus

HILL COUNTY SHERIFF'S DEPARTMENT;  
BRENT BUTTON, Sheriff; KEVIN DAVIS,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
(No. W-01-CV-265)

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October 25, 2002

Before BARKSDALE, DEMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Steven Lee Gregory, Texas prisoner # 849097, appeals, *pro se*, the dismissal, pursuant to FED. R. CIV. P. 12(b)(6), of his 42 U.S.C. § 1983 action because he fails to state a claim upon which relief may be granted. Gregory contends defendants violated his civil rights by failing to investigate burglaries of his house or arrest

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a suspect for them. A Rule 12(b)(6) dismissal is reviewed *de novo*. *E.g.*, ***Oliver v. Scott***, 276 F.3d 736, 740 (5th Cir. 2002).

The Due Process Clause does not require the State to protect the life, liberty, and property of its citizens against invasion by private actors. See ***DeShaney v. Winnebago County Dep't of Social Servs.***, 489 U.S. 189, 195 (1989). Further, Gregory has not shown an exception to this general rule based on a special relationship. See ***Walton v. Alexander***, 44 F.3d 1297, 1299-1304 (5th Cir. 1995) (en banc); ***Johnson v. Dallas Indep. Sch. Dist.***, 38 F.3d 198, 200 (5th Cir.), *cert. denied*, 514 U.S. 1017 (1995).

Gregory also contends defendants violated his equal protection rights by failing to investigate the burglaries or arrest a suspect because Gregory is incarcerated. Because Gregory has not alleged that he was treated differently from similarly situated individuals or that the unequal treatment was based on the defendants' discriminatory intent, he has not alleged sufficient facts to state an equal protection claim. See ***Taylor v. Johnson***, 257 F.3d 470, 473 (5th Cir. 2001).

Gregory's appeal is without arguable merit and is thus frivolous. See ***Howard v. King***, 707 F.2d 215, 219-20 (5th Cir. 1983). Because it is frivolous, the appeal is **DISMISSED**. See 5TH CIR. R. 42.2. Gregory is advised that the district court's dismissal of his complaint for failure to state a claim and the dismissal of this appeal both count as strikes under 28 U.S.C. § 1915(g). See ***Adepegba v. Hammons***, 103 F.3d 383, 395 (5th Cir.

1996). Gregory is advised that, if he receives one more strike, he may not proceed *in forma pauperis* in any civil action or appeal while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury.

***DISMISSED; SANCTION WARNING ISSUED***