

February 27, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10579
Summary Calendar

ALTON JAMES NICKLEBERRY

Plaintiff

v.

DANNEIL JOHNSON, Etc; ET AL.

Defendants

ALTON JAMES NICKLEBERRY

Plaintiff - Appellee

v.

NFN BILINSKY, Officer, Dallas County, NFN TEEL,
Sergeant, Dallas County

Defendants - Appellants

Appeal from the United States District Court
for the Northern District of Texas

USDC No. 3:01-CV-1497

USDC No. 3:01-CV-2104

Before KING, Chief Judge, and DAVIS and BARKSDALE, Circuit
Judges.

PER CURIAM:*

* 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that this opinion should not be published and is not precedent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.

Officer Bilinsky and Sergeant Teel appeal from the denial of their qualified immunity defense raised in response to Alton Nickleberry's, Texas prisoner # 1105513, civil rights complaint. The denial of a motion for summary judgment based on qualified immunity is immediately appealable only when based on an issue of law. Rodriguez v. Neeley, 169 F.3d 220, 222 (5th Cir. 1999). Orders determining "only a question of 'evidence sufficiency,' i.e., which facts a party may, or may not, be able to prove at trial," are not based on an issue of law and are not immediately appealable. Johnson v. Jones, 515 U.S. 304, 313 (1995).

Issues of evidence sufficiency precluded the district court from making a determination on the qualified immunity defense at the summary judgment stage of the proceedings; its decision was thus not based on an issue of law and is not immediately appealable. See id. We therefore dismiss the appeal for lack of jurisdiction and deny all outstanding motions as moot.

APPEAL DISMISSED; ALL OUTSTANDING MOTIONS DENIED.