

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-8654
Conference Calendar

ROY VILLANEUVA, ET AL.,

Plaintiffs,

ROY VILLANEUVA,

Plaintiff-Appellant,

versus

JANICE WAGLEY, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. 91-CV-246
- - - - -
(January 21, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges

PER CURIAM:*

Before reaching the merits of this case, this Court must examine the basis of its jurisdiction on its own motion if necessary. Mosely v. Cosby, 813 F.2d 659, 660 (5th Cir. 1987). The plaintiffs' notice of appeal is styled "Roy Villaneuva, et al." The names of the other plaintiffs do not appear on its face. Fed. R. App. P. 3(c) requires that the notice of appeal "specify the party or parties taking the appeal[.]" Thus, the notice of appeal in this case brings only the appeal of

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Villaneuva himself before the Court. See Torres v. Oakland Scavenger Co., 487 U.S. 312, 318, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988).

Villaneuva contends that the district court erred in dismissing plaintiffs' claim under § 1983 because the claim actually fell within the purview of § 1985(3). "It is well-settled law that the discriminatory animus behind an alleged violation of section 1985(3) must be racially based or in some other way class-based." Galloway v. State of Louisiana, 817 F.2d 1154, 1159 (5th Cir. 1987).

The complaint does not allege that defendants' actions were motivated by racially discriminatory animus. Rather, the complaint defines the victimized class as the group of prisoners at Kyle who allegedly received inadequate medical care as the result of defendants' conspiratorial actions. This class of state prisoners, of which Villaneuva claims to be a member, does not fall within a category entitled to § 1985(3) protection. See Galloway, 817 F.2d at 1159.

Because it clearly appears that Villaneuva would not be entitled to recover under any set of facts that could be proved in support of his claim, the district court's dismissal for failure to state a claim for relief is AFFIRMED. See Cooper v. Sheriff, Lubbock County, Tex., 929 F.2d 1078, 1082 (5th Cir. 1991).