

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4164
Conference Calendar

THEODORE FLANAGAN,

Plaintiff-Appellant,

versus

T. HINTON,
Etc., ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:87-CV-43
- - - - -
(January 21, 1993)

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

PER CURIAM:*

Theodore Flanagan's civil rights complaint alleged constitutional violations arising out of a traffic stop in Nacogdoches, Texas. The officers who peered into Flanagan's car during the traffic stop were not conducting a search within the meaning of the Fourth Amendment. Brumfield v. Jones, 849 F.2d 152, 155 (5th Cir. 1988). According to Flanagan's allegations, the meat cleaver, a weapon which he was arrested for illegally possessing, was in plain view. Its seizure was not

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

unconstitutional. United States v. Coleman, 969 F.2d 126, 131 (5th Cir. 1992). The search of the trunk of the car was also proper. United States v. Ross, 456 U.S. 798, 823, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982). Because the search was proper, Flanagan's arguments that the resulting arrest and seizure of the meat cleaver were unconstitutional are moot because they rest entirely on the claimed illegality of the search. Flanagan was in custody for less than 48 hours; he was released promptly. County of Riverside v. McLaughlin, ___ U.S. ___, 111 S. Ct. 1661, 1670, 114 L. Ed. 2d 49 (1991).

Flanagan has not alleged how the state's choice not to prosecute him deprived him of any constitutional right. Denial of a trial and appointment of counsel in the instant proceeding was not an abuse of discretion. Cay v. Estelle, 789 F.2d 318, 324 (5th Cir. 1989); Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

Flanagan's claims lack an arguable basis in law and are, therefore, frivolous. 28 U.S.C. § 1915(d); Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). The district court did not abuse its discretion in dismissing the action. Id. at 1734.

AFFIRMED.