

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8531
(Summary Calendar)

Troy Eugene Wigley,
Plaintiff-Appellant,
v.
Raul Mata, Captain and
Luis Ramos,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
W 92 CV 61

June 9, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Proceeding pro se and in forma pauperis, Troy Wigley, an inmate in the Texas Department of Criminal Justice, Institutional Division (TDCJ), filed this action pursuant to 42 U.S.C. § 1983 challenging the constitutionality of certain disciplinary hearings conducted by TDCJ employees Raul Mata and Luis Ramos. Wigley sought monetary damages as well as declaratory and

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

injunctive relief.¹ After conducting a Spears² hearing, at which Wigley stated that he was suing Mata and Ramos only in their official capacities as TDCJ disciplinary officers, a magistrate recommended dismissing the action as frivolous and imposing sanctions. The district court adopted the magistrate's recommendation, dismissed the action as frivolous, imposed monetary sanctions of \$100, and directed the Clerk's office not to accept any further civil filings from Wigley until the monetary sanction is paid unless Wigley first obtains leave to file the action from a district or magistrate judge.

On September 30, 1992, Wigley filed a notice of appeal. Apparently after reconsidering his position, Wigley has now requested that we dismiss his appeal because he "is of the belief that any grounds mentioned therein for grounds of reversal will be meritless and frivolous." Without expressing any opinion with respect to Wigley's assessment of the arguments he has raised on appeal, we grant his motion to dismiss the appeal.

We note, however, that Wigley is no stranger to this court. In five prior actions, Wigley sought unsuccessfully to sue various TDCJ officials and even TDCJ units under § 1983. In each instance, Wigley's action was dismissed on Eleventh Amendment grounds either because Wigley had sued a state agency or because

¹ Specifically, Wigley sought a court order instructing the Defendants to remove from his record the allegedly unconstitutional disciplinary report and remove the "hold" that had been placed on his trust fund account.

² See Spears v. McCotter, 766 F.2d 179, 181-82 (5th Cir. 1985).

he insisted that he was suing TDCJ officials only in their official capacities. In each instance, this court dismissed Wigley's appeal as frivolous.³ This court also warned Wigley, in the four most recent of these decisions that "if he continues to insist on proceeding in a § 1983 action against defendants in their official capacities only, this court may assess monetary sanctions and may refuse to allow him to file any further appeal [in forma pauperis] unless the district court has certified that the appeal is taken in good faith." Our warning undoubtedly played some part in the district court's decision to sanction Wigley, and, perhaps, in Wigley's decision to voluntarily dismiss his appeal. We therefore refrain from assessing additional sanctions.

IT IS ORDERED that the motion of the Appellant to dismiss this appeal is GRANTED. Accordingly, Wigley's appeal is DISMISSED.

³ See Wigley v. Smith, No. 92-8400 (5th Cir. Nov. 9, 1992) (unpublished opinion); Wigley v. Alfred Hughes Unit, No. 92-8359 (5th Cir. Nov. 9, 1992) (unpublished opinion); Wigley v. Lynaugh, No. 92-4011 (Aug. 19, 1992) (unpublished opinion); Wigley v. Alfred Hughes Unit, No. 92-8344 (Aug. 18, 1992) (unpublished opinion); Wigley v. Cox, No. 90-4865 (5th Cir. May 22, 1991) (unpublished opinion).