

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1919
Conference Calendar

CARDELL FRANKLIN BURTON,

Plaintiff-Appellant,

versus

DR. CARDENAS, Psychiatrist,
Texas Department of Criminal Justice,
Clements Unit,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:92-CV-17

- - - - -
(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Cardell Franklin Burton filed a suit under 42 U.S.C. § 1983 against Dr. Cardenas, a psychiatrist in Burton's prison unit. Burton alleged that he was injected with chemicals and forcibly bathed with a harsh chemical soap at the direction of Dr. Cardenas.

After making an independent examination of the record, the district court adopted the magistrate judge's report and recommendation and dismissed Burton's complaint. Burton's objections

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

to the magistrate judge's report and recommendation were filed four days after the dismissal of the complaint.

Pro se briefs must be liberally construed. Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). However, even in pro se briefs, arguments must be briefed to be preserved. See Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988). Without reference to any legal argument or relevant legal precedent, Burton has failed to preserve for appellate review the issue whether the district court's dismissal of his complaint was in error. However, affording Burton's appellate brief liberal construction, Burton has sufficiently raised as an issue on appeal whether the district court should have considered Burton's untimely objections to the magistrate judge's report and recommendation.

A pro se prisoner's objections to a magistrate judge's report are considered timely filed if they are handed to prison officials prior to the expiration of the district court's deadline. Thompson v. Rasberry, 993 F.2d 513, 514 (5th Cir. 1993). Burton does not assert that he complied with that requirement.

However, even assuming that the district court should have considered the objections, the court's failure to consider the objections was harmless because a review of the objections shows that Burton raised no new grounds warranting reconsideration. Further, the district court reviewed the magistrate judge's findings and recommendation de novo.

This appeal presents no issue of arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20, (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

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