

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-2174
Summary Calendar

FRANKIE K. WORKEY,

Plaintiff-Appellant,

VERSUS

ENTERPRISE PRODUCTS COMPANY,

Defendant-Appellee.

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

(CA-H-90-959)

(May 16, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:¹

The jury rendered a verdict in Workey's 42 U.S.C. § 1981 suit, finding that he had not been the victim of unlawful discrimination. Thereafter the district court entered an order dismissing Workey's Title VII suit, concluding that his claim was "wanting in

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

cognizable fact." Workey now appeals *pro se*. For the reasons set forth below, we find that Workey's points on appeal lack merit and, therefore, affirm.

The Supreme Court has recently foreclosed Workey's claim concerning the retroactivity of § 102 of the Civil Rights Act of 1991.² Moreover, Workey incorrectly asserts that the district court dismissed his Title VII claim "peremptorily without any hearing at all." The court heard all of the alleged discrimination evidence during the two-day trial of Workey's § 1981 claim, and like the jury, the court rejected it.

Furthermore, Workey's several challenges concerning the court's charge to the jury are precluded because of his trial counsel's failure to raise any pertinent objection. For instance, counsel did not object to the court's apparent failure to notify either counsel beforehand of the charge the court submitted to the jury. In the absence of an objection, any error was waived.³ The same result obtains with respect to Workey's claim that the court failed to adequately instruct the jury on the law relevant to his claim; by failing to raise pertinent objections before the jury retired, counsel waived any deficiencies with the charge.⁴

Workey's claims concerning the trial judge's bias and lack of

²Landgraf v. USI Film Products, --- S. Ct. ----, 1994 WL 144450 (U.S., Apr. 26, 1994)(No. 92-757) (§ 102 does not apply to conduct occurring before its effective date, November 21, 1991).

³Matherne v. Wilson, 851 F.2d 752, 762 (5th Cir. 1988).

⁴Tandy Brands, Inc. v. Harper, 760 F.2d 648, 653 (5th Cir. 1985).

objectivity are wholly without merit. The federal trial judge has the duty of ensuring a fair and expeditious trial.⁵ Workey misconstrues the judge's discharge of this duty as yet another instance of racial mistreatment. The transcript, when read as a whole, reveals that the court's comments and questions were not prejudicial and did not impair Workey's substantial rights or cast doubt on the jury's verdict.⁶ In any event, Workey's counsel never objected, thus limiting our review to plain error.⁷ We find none.

Finally, concerning the district court's evidentiary rulings, Workey cannot predicate reversal on the district court's refusal to admit evidence related to his EEOC complaint because any error associated with the court's ruling was not preserved in accordance with Federal Rule of Evidence 103. The same is arguably true of the court's exclusion of Workey's expert testimony concerning his alleged emotional injury. However, even if error was preserved, because the jury found no unlawful discrimination, the court's exclusion of strictly damage evidence could not have prejudiced Workey's substantial rights.⁸

In light of the foregoing, the district court's judgment and

⁵Johnson v. Helmerich & Payne, Inc., 892 F.2d 422, 425 (5th Cir. 1990).

⁶Johnson, 892 F.2d at 425; Bufford v. Rowan Companies, Inc., 994 F.2d 155, 157 n.1 (5th Cir. 1993).

⁷Johnson, 892 F.2d at 425.

⁸Scheib v. Williams-McWilliams Co., Inc., 628 F.2d 509, 511 (5th Cir. 1980); McGowne v. Challenge-Cook Bros. Inc., 672 F.2d 652, 666 (8th Cir. 1982).

order are AFFIRMED.