

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2358  
Conference Calendar

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ROBERT FRANKLIN CALDWELL,

Plaintiff-Appellant,

versus

INTERNAL AFFAIRS OFFICE,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-93-453  
- - - - -  
(March 22, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

A complaint filed in forma pauperis can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Robert Franklin Caldwell argues that the district court prematurely dismissed his complaint without a Spears hearing. A district court is not required to conduct a Spears hearing before dismissing an IFP complaint as frivolous. Green v. McKaskle, 788 F.2d 1116, 1120 (5th Cir. 1986).

To obtain relief under section 1983 a plaintiff must prove that he was deprived of a Constitutional right or federal statutory right and that the persons depriving him of that right acted under color of law. Hernandez v. Maxwell, 905 F.2d 94, 95 (5th Cir. 1990). In his complaint and on appeal Caldwell alleges only that the investigation into his allegations of excessive force was insufficient. He does not allege that excessive force was used against him or that he was punished without due process. At most Caldwell alleges that the Internal Affairs Office failed to comply with TDCJ-ID rules, but an alleged violation of prison regulations without more does not give rise to a constitutional violation. Hernandez v. Estelle, 788 F.2d 1154, 1158 (5th Cir. 1986). The district court did not abuse its discretion by dismissing the complaint as frivolous.

AFFIRMED.