

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2598
Summary Calendar

MICHAEL JOHN WARREN,

Plaintiff-Appellant,

VERSUS

JAMES A. LYNAUGH, and DAN GROUNDS,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-89-3906)

(May 16, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Michael Warren, a citizen of the United Kingdom confined by the Texas Department of Criminal Justice, appeals the grant of summary judgment dismissing his civil rights action claiming discrimination based on national origin, retaliation for filing grievances. We affirm and deny his motions for default and to correct the caption of the proceedings.

Prison authorities returned to The National Council for the Welfare of Prisoners Abroad (NCWPA), a book it sent to Appellant

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

because NCWPA was not on the list of approved foreign agencies from which prisoners could receive packages. Appellant sued under 42 U.S.C. § 1983 making the claims noted above. Following a Spears² hearing, the district court dismissed the retaliation claim as frivolous and granted summary judgment for Defendants on the other claims.

Warren claims that he was denied the book on the basis of his national origin. Appellees contend that he is estopped to raise this claim because he raised it as a plaintiff in the class action Guajardo v. Estelle, 580 F.2d 748 (5th Cir. 1978). While Warren argues that he did not raise this issue there, the record establishes otherwise. As a plaintiff he filed pleadings complaining that "prison officials returned to sender a book he had ordered from an organization in England known as the National Council for the Welfare of Prisoners Abroad, which is assisting him in the matter of his transfer [to an English prison]." His claim is without merit. The issue he raises here is identical to the issue he raised in Guajardo.

Appellant makes a number of other arguments which he did not raise in the district court and which we, therefore, do not reach. Neither does he address the merits of the district court's dismissal of his retaliation claim or point to any alleged errors in its legal analysis.

Judgment of the district court is AFFIRMED. Motions to correct the caption and for default judgment are DENIED.

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