

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2840
Conference Calendar

JOHN KING DAVIS ET AL.,

Plaintiffs,

JOHN KING DAVIS,

Plaintiff-Appellant,

versus

INMATE TRUST FUND,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA H 92-4033
- - - - -

(July 19, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

John King Davis appeals the judgment of the district court dismissing his civil rights action as frivolous pursuant to 28 U.S.C. § 1915(d). Davis contends that Officer Salvato violated his Eighth Amendment rights by maliciously and sadistically applying excessive force that inflicted pain and caused the window of a prison transport van to be broken. Based on Salvato's conduct, Davis asks this Court to order the Inmate

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Trust Fund to return to his prison account the amount of \$101 that was assessed for the broken window.

Davis' Eighth Amendment claim against Salvato is not properly before the Court. The issue was not presented to the district court, and Salvato is not a named defendant. See Beck v. Lynaugh, 842 F.2d 759, 762 (5th Cir. 1988). We liberally construe Davis's brief as raising an argument that he was unlawfully deprived of his property.

"[T]he role of the federal courts in reviewing prison proceedings is a narrow one." Stewart v. Thigpen, 730 F.2d 1002, 1005 (5th Cir. 1984). "If the state provides a procedurally adequate hearing, it does not deprive an inmate of constitutional rights, because the constitution guarantees only the right to be free from deprivation of life, liberty or property without due process." Id. at 1006.

Davis does not challenge the district court's finding that the disciplinary hearing conformed to the requirements of due process. He merely asserts that the result of the disciplinary hearing was unfair because of Salvato's conduct. Therefore, he has not demonstrated that the district court abused its discretion in dismissing the action as frivolous. See Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

Moreover, the appeal is without arguable merit and thus frivolous. See 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.

APPEAL DISMISSED.