

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8428  
Conference Calendar

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JOHN WHITSON,

Plaintiff-Appellant,

versus

JACK GARNER, Warden,  
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-93-CA-45  
- - - - -  
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

The district court did not abuse its discretion in dismissing John Whitson's complaint as frivolous. 28 U.S.C. § 1915(d); Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993). Whitson's claim that property was destroyed raises no constitutional issue because Texas provides an adequate postdeprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984); Myers v. Adams, 728 S.W.2d 771, 772 (Tex. 1987). Receipt of a damaged dessert raises no

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

constitutional issue. Green v. Ferrell, 801 F.2d 765, 770 (5th Cir. 1986).

Whitson's claim that he is issued damaged and moldy clothing does not support his conclusional allegation that the clothing is unsanitary. Jacquez v. Procunier, 801 F.2d 789, 793 (5th Cir. 1986); Green, 801 F.2d at 771. His claim regarding a disciplinary hearing raises no constitutional issue because he conceded in the district court that he was afforded the elements of a fair hearing, even though he alleged that the charges were fabricated and he would like to have resolved the matter informally. Wolff v. McDonnell, 418 U.S. 539, 563-64, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); Stewart v. Thiqpen, 730 F.2d 1002, 1005-06 (5th Cir. 1984). The appeal is frivolous. See Howard v. King, 707 F.2d 215, 129-30 (5th Cir. 1983).

APPEAL DISMISSED. See 5th Cir. R. 42.2.