

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10525
Summary Calendar

RAYMOND HERBERT SLOAN,
Plaintiff-Appellant,
versus
R. C. THALER, Senior Warden,
et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(5:94 CV 114 C)

(November 11, 1994)

Before, SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

Per curiam:¹

Raymond Herbert Sloan ("Sloan"), a prisoner in the Texas Department of Criminal Justice ("TDCJ"), filed a civil rights action against TDCJ and several employees.² He alleged violations

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

² The defendants were Warden R.C. Thaler, Assistant Warden Hightower, Major Laughlin, Captain Graham, Lieutenant Gearhart, Officer Ward, Mr. Johnson, a maintenance worker, Lieutenant Oliver, Officer Howard, Mr. Hensley, the Unit Medical

of his constitutional rights that arose as a result of back and neck injuries he claimed were sustained when a steel beam over the cell door fell and struck him on the head. Sloan asserts that, because of the injury to his back, he was unable to perform the duties required by his job assignment to the medical hoe squad. He further contends that disciplinary charges were filed against him for his inability to keep pace with the squad and that he was denied medical attention.

The district court found that the facts alleged by plaintiff in this case arose from the same incidents that were the basis of plaintiff's claims in previous civil actions, that the prior suits were dismissed as frivolous, and that Sloan was bound by the previous rulings according to the doctrine of *res judicata*. Because the allegations were duplicative, the district court dismissed the claims as frivolous and malicious.

DID THE DISTRICT COURT ERR IN DISMISSING SLOAN'S CLAIMS?

The district court recognized that Sloan "may have alleged other theories of recovery against 'new' defendants in this complaint," and dismissed those claims as frivolous also. The following determinations were made concerning the new claims: 1) Sloan's allegation that he had been insulted and harassed did not rise to the level of a constitutional violation, 2) the claims that he was not afforded special treatment because of any injury sustained have no basis in fact, 3) a previous trial on the merits had revealed that Sloan had not suffered "any injury that required

Administrator, Dr. Smiley, and Nurse Guinan.

special treatment although he did receive it." The district court warned Sloan that it would impose sanctions if he continued filing frivolous lawsuits and dismissed the complaint as frivolous pursuant to 28 U.S.C. § 1915(d).

We liberally construe Sloan's arguments on appeal as a challenge to the district court's dismissal of "other theories of recovery against 'new' defendants." Sloan does not challenge the dismissal of the duplicative claims; therefore, those claims are deemed abandoned. See *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). This Court "will not raise and discuss legal issues that [Sloan] has failed to assert." *Id.* Likewise, a "new" claim against the maintenance crew was not briefed and is deemed abandoned. *Id.*

To prevail on appeal, Sloan would have to show that the district court abused its discretion in dismissing claims as frivolous under § 1915(d) that have an arguable basis in law and fact. See *Denton v. Hernandez*, ___U.S.___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992); *Ancar v. Sara Plasma, Inc.* 964 F.2d 465, 468 (5th Cir. 1992).

Sloan's complaint that he has been insulted and harassed does not rise to the level of a constitutional violation under 42 U.S.C. § 1983, see *McFadden v. Lucas*, 713 F.2d 143, 146 (5th Cir.), *cert. denied*, 464 U.S. 998 (1983), and therefore has no basis in law.

Further, we agree with the district court that the remainder of Sloan's claims are factually baseless, because they are bottomed on his assertion that he is entitled to special treatment for his

back injury, which claim was rejected in a previous lawsuit.³

CONCLUSION

The district court did not err in dismissing Sloan's case as frivolous. AFFIRMED.

³*Sloan v. Gearhart, et al.*, 5:94-CV-0113-C, in the United States District Court for the Northern District of Texas.