

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10882
Conference Calendar

JAMES HENRY JOHNSON,

Plaintiff-Appellant,

versus

MRS. JOWERS ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:94-CV-28
- - - - -

(January 26, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

A complaint filed in forma pauperis may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993); see Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). This court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S. Ct. at 1734.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Johnson does not discuss in his brief the issues he presented in the district court, namely that of interference with his legal mail and non-legal mail. He merely asserts that the Court should decide in his favor and further suggests that he would be willing to "settle" his case with the Court. By not adequately briefing his claims, Johnson waived them. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

Johnson has also filed a "motion for appellate review" alleging that his Spears hearing was "unfair and onesided" based on the magistrate judge's refusal to grant his request that subpoenas be issued for 39 witnesses. Within the context of the Spears hearing, the court has the discretion to decide how best "to elicit the complainant's articulation of his grievance and the basis for making any credibility assessment needed." Wilson v. Barrientos, 926 F.2d 480, 483 (5th Cir. 1991). Furthermore, Johnson has not demonstrated that any relevant testimony was excluded or made a substantial showing that the testimony of those witnesses was needed. See Cupit v. Jones, 835 F.2d 82, 86-87 (5th Cir. 1988). Accordingly, the motion is DENIED.

The district court's dismissal of Johnson's claims was not an abuse of discretion. This appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

APPEAL DISMISSED. See Fifth Cir. R. 42.2.