UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20888

CHARLES FRANKLIN,

Plaintiff-Appellant,

VERSUS

LARRY KYLE, et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-94-1038)

August 17, 1995

Before HIGGINBOTHAM and PARKER, Circuit Judges, and TRIMBLE[*], District Judge.

Per curiam[**]:

Appellant Charles Franklin ("Franklin"), an inmate of the

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[*] District Judge for the Western District of Texas, sitting by designation.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Texas Department of Criminal Justice -- Institutional Division ("TDCJ"), filed a *pro se* lawsuit, and requested pauper status under 28 U.S.C. 1915(a). The district court found the complaint frivolous as a matter of law, and dismissed it with prejudice. We affirm.

DISCUSSION

Franklin contends that he entitled to receive minimum wage under the Fair Labor Standards Act (FLSA) 29 U.S.C. § 201 for work performed in the Prison Industries Shoe Factory. Inmate status does not foreclose FLSA protection, but a prisoner who has been sentenced to labor as part of his sentence is not an employee covered by the FLSA regarding prison work assignments. *See Watson v. Graves*, 909 F.2d 1549, 1553 & n.7 (5th Cir. 1990); *Alexander v. Sara, Inc*., 721 F.2d 149, 150 (5th Cir. 1983). The Court reasoned that in such a case, there is "no employer-employee relationship, because the inmate['s] labor belong[s] to the penitentiary[.]" *Alexander*, 721 F.2d at 150.

Franklin asserts in his appellate brief that he was not sentenced to labor. However, Texas prisoners who were sentenced prior to 1989 were sentenced to hard labor by virtue of former article 6166x of the Texas Revised Civil Statutes. *See Wendt v. Lynaugh*, 841 F.2d 619, 620 (5th Cir. 1988). In 1989, article 6166x was repealed. Vernon's Tex. Session Law Service 1989. Franklin was sentenced in 1982; his FLSA claim is therefore foreclosed by former article 6166x and *Wendt.*

Franklin also claims that he is being subjected to involuntary

servitude in violation of his Thirteenth Amendment rights. He asserts that he has a choice between participating in the prison industries program or risking loss of good-time credits. Although such a choice may be a painful one, it nevertheless renders his Thirteenth Amendment claim lacking in an arguable basis in law or fact. *Watson v. Graves*, 909 F.2d 1549, 1552-53 (5th Cir. 1990).

CONCLUSION

We agree with the district court that Franklin's claims are frivolous as a matter of law, and therefore AFFIRM the dismissal with prejudice.