

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41207
Conference Calendar

BENJAMIN SEMIEN, JR.,

Plaintiff-Appellant,

versus

UNITED STATES SUPREME COURT,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 94-CV-1153

- - - - -
March 21, 1995

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Benjamin Semien, Jr., was awarded Social Security disability insurance benefits based on mental impairment. Semien appealed the award of benefits to this court, the award was affirmed, and the United States Supreme Court denied certiorari and rehearing. Semien v. U.S. Secretary of HHS, No. 93-4142 (5th Cir. August 20, 1993) (unpublished), cert. denied, 114 S. Ct. 2124 (1994).

Semien's current suit seeks damages from the Supreme Court for failure to grant certiorari. The district court dismissed the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

suit as frivolous under 28 U.S.C. § 1915(d). Semien's motion to this court for leave to proceed in forma pauperis (IFP) on appeal is unnecessary. He was granted IFP status in the district court.

Semien's suit has no basis in law or in fact for several reasons. See Denton v. Hernandez, 112 S. Ct. 1728, 1733-34 (1992). First, with respect to the Supreme Court as an entity, sovereign immunity has not been waived expressly. Cf. United States v. Testan, 424 U.S. 392, 399 (1976). Second, "[a] review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefore." Sup. Ct. R. 10.1. As such, Semien had no right to a writ of certiorari. Third, the individual justices are immune from suit for damages because they were acting within their jurisdiction in denying the writ. The district court did not abuse its discretion in dismissing Semien's complaint as frivolous. Denton, 112 S. Ct. at 1733-34. Semien's appeal is without arguable merit and thus, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

MOTION DENIED; APPEAL DISMISSED. 5th Cir. R. 42.2.