

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50256
Summary Calendar

JOHNNY ROBINSON,

Plaintiff-Appellant,

versus

DOUGLAS BANNISTER,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-93-CA-117
- - - - -
(August 29, 1994)

Before KING, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

Johnny Robinson's motion to proceed in forma pauperis (IFP) on appeal is GRANTED. Robinson is financially eligible to proceed IFP and his appeal presents non-frivolous issues. See Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986).

The district court abused its discretion dismissing the suit on the basis of qualified immunity. The district court's credibility determinations were outside the scope of the district

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

court's discretion in evaluating the complaint under 28 U.S.C. § 1915(d). Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992); Booker v. Koonce, 2 F.3d 114, 116-17 (5th Cir. 1993).

The order of dismissal is VACATED, and the suit is REMANDED to the district court for additional proceedings. Clark v. Williams, 693 F.2d 381, 382 (5th Cir. 1982).

This order is not to be construed as any indication that plaintiff's lawsuit ultimately will be found to have merit.