IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50327

ALVIN LEE HARRISON,

Plaintiff-Appellant,

versus

R. BURKETT, Sgt.,

Defendant-Appellee.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. W-92-CA-245
- - - - - - - - - - - -
(October 11, 1994)

Before KING, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Alvin Lee Harrison's motion to proceed in forma pauperis on appeal is DENIED. Harrison has not shown that the district court abused its discretion in denying his motion for relief from the judgment dismissing his civil rights action as frivolous and assessing sanctions. See Phillips v. Insurance Co. of N. America, 633 F.2d 1165, 1167 (5th Cir. 1981).

Harrison's claim that the magistrate judge misconstrued his argument is unconvincing. The record does not support Harrison's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

contention that he raised the question whether the correspondence rules discriminated against indigent prisoners by depriving them of free materials when similar materials were available to those prisoners who could pay.

Equally unavailing is his argument that the magistrate judge made improper credibility determinations at the hearings held pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). It was undisputed that the publishers in question were not on the approved list and that the materials had not been destroyed. To the extent that the magistrate judge believed that the Warden was willing to make arrangements to return the books to the sender and disbelieved Harrison, the limited credibility determination was not improper. See Wesson v. Oglesby, 910 F.2d 278, 281 (5th Cir. 1990). Further, for the reasons stated above, Harrison's claim that the magistrate judge eliminated his discrimination claims is frivolous.

Harrison's argument that the magistrate judge erred in imposing sanctions also fails. Harrison does not dispute the magistrate judge's assertion that he is no stranger to the federal courts or to sanctions. He concedes that he has filed at least eight prior lawsuits and that the district court previously assessed a sanction of $50 and warned that stronger sanctions would be assessed in the future. Harrison has not demonstrated that the magistrate judge abused his discretion in assessing sanctions for filing yet another frivolous lawsuit. See Thomas v. Capital Sec. Serv., Inc., 836 F.2d 866, 878 (5th Cir. 1988) (en banc); see also Knipe v. Skinner, 19 F.3d 72, 78 (2d Cir.

1994) (under the amended version of Rule 11, the decision whether to impose sanctions is within the discretion of the district court).

On appeal, Harrison can present no legal points arguable on their merits, and the appeal from the denial of his Rule 60(b) motion is frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. Rule 42.2.