

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60668
Conference Calendar

BILLY RAY JOHNSON,

Plaintiff-Appellant,

versus

R. GARCIA, Warden,
Texas Department of Criminal Justice,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. 93-CV-423, C.A. C-94-71
- - - - -

August 22, 1995

Before KING, JOLLY, and WIENER, Circuit Judges.

PER CURIAM:*

The district court did not abuse its discretion by dismissing as frivolous Texas prisoner Billy Ray Johnson's civil rights complaint challenging Warden R. Garcia's failure immediately to remove Johnson from close custody after Johnson's disciplinary convictions were reversed on appeal. Sandin v. Conner, 115 S. Ct. 2293, 2300 (1995); Ancar v. Sara Plasma, Inc.,

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

964 F.2d 465, 468 (5th Cir. 1992). To the extent that Johnson suggests that Warden Garcia was not timely informed that Johnson's disciplinary convictions had been overturned, his claim is not actionable under 42 U.S.C. § 1983. Moody v. Baker, 857 F.2d 256, 258 (5th Cir.), cert. denied, 488 U.S. 985 (1988).

Because the facts alleged in Johnson's complaint and testimony at a Spears** hearing do not support his claim of a constitutional violation, the district court did not abuse its discretion by dismissing the complaint without further investigation. Ancar, 964 F.2d at 468.

This court declines to consider Johnson's arguments concerning a July 15, 1993, disciplinary hearing because he did not raise them in the district court. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Johnson's motion for appointment of appellate counsel is DENIED. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

AFFIRMED.

** Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).