

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 95-11191  
Conference Calendar

---

JOSEPH CENTOFANTI,

Plaintiff-Appellant,

versus

LYLE G. HALLIBURTON,

Defendant-Appellee.

- - - - -  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:95-CV-219  
- - - - -

April 17, 1996

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:\*

Joseph Centofanti appeals the dismissal of his 42 U.S.C. § 1983 complaint as frivolous pursuant to 28 U.S.C. § 1915(d). Centofanti alleges that Lyle Halliburton, a guard in the Texas Department of Criminal Justice, violated his constitutional rights because Halliburton would not allow Centofanti to wear a back brace on a bus ride to Galveston Hospital although Centofanti had permission to wear the brace only during work.

A complaint filed in forma pauperis (IFP) may be dismissed if the complaint is frivolous. 28 U.S.C. § 1915(d); Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). "An action is frivolous if

---

\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

it lacks an arguable basis either in law or in fact." Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993) (quotations omitted). A § 1915(d) dismissal is reviewed for an abuse of discretion. Id.

"[A] prison official cannot be found liable under the Eighth Amendment . . . unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 114 S. Ct. 1970, 1979 (1994). The dismissal of Centofanti's complaint was not an abuse of discretion. Centofanti's appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.

We caution Centofanti that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Centofanti is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous because they have been previously decided by this court.

APPEAL DISMISSED; SANCTION WARNING ISSUED.