

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-40059
Conference Calendar

PETE VARDAS, JR.,

Plaintiff-Appellant,

versus

TEXAS DEPARTMENT CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION,
Pardons and Parole Division,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:94-CV-363
- - - - -

June 30, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Pete Vardas, Jr., filed a motion to dismiss without prejudice his civil rights complaint, 42 U.S.C. § 1983, under Fed. R. Civ. P. 41(a)(1), and the district court granted the motion. On appeal Vardas argues the merits of his underlying Eighth Amendment claim, but fails to challenge the basis of the dismissal. Issues not raised or briefed are considered abandoned. Evans v. City of Marlin, Tex., 986 F.2d 104, 106 n.1 (5th Cir. 1993).

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

To the extent that he argues for the first time on appeal that the district court and Texas Department of Criminal Justice officials conspired to violate his civil rights, this court will not address issues not considered by the district court.

"[I]ssues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

The appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2. All motions are DENIED.