

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-40686
Conference Calendar

KENNETH WAYNE McCULLOUGH,

Plaintiff-Appellant,

versus

T.A. SHARP, Disciplinary Captain;
J.B. BARNHART, CO III; V. HESTER,
Sub Counsel, ROBERT J. PARKER, Warden,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:93-CV-300
- - - - -

April 19, 1996

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Kenneth Wayne McCullough appeals the dismissal of his civil rights complaint as frivolous pursuant to 28 U.S.C. § 1915(d). He contends that the district court deprived him of access to the courts, deprived him of equal protection, and denied him the right to a jury trial by dismissing his complaint as frivolous.

The district court did not deprive McCullough of his ability to prepare or transmit legal documents; the district court did

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

not violate McCullough's right of access to the courts. *Brewer v. Wilkinson*, 3 F.3d 816, 821 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1081 (1994). The dismissal of McCullough's complaint as frivolous did not single him out for disparate treatment on the basis of his poverty; the district court did not violate McCullough's right to equal protection. *See Lavernia v. Lynaugh*, 845 F.2d 493, 496 (5th Cir. 1988). By dismissing McCullough's complaint as frivolous, the district court determined that McCullough's complaint lacked basis in law or in fact; no facts remained in dispute for a jury to determine. *See Plaisance v. Phelps*, 845 F.2d 107, 108 (5th Cir. 1988). The district court did not deny McCullough the right to a jury trial.

We caution McCullough that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, McCullough 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. *See* 5TH CIR. R. 42.2. SANCTION WARNING
ISSUED.