

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-50608

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KENNETH LEE JOHNSON,

Plaintiff-Appellant,

versus

ALICE BENNER; DELPHIS BENOIT;  
JACK M. GARNER, Warden; CHARLIE  
F. STREETMAN, Assistant Warden;  
FRANK WILLIAMS; GRACE E. KENNEDY

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-94-CV-37  
- - - - -

November 17, 1995

Before KING, SMITH and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Kenneth Lee Johnson requests leave to proceed in forma pauperis (IFP) on appeal from the district court's dismissal, under 28 U.S.C § 1915(d), of his civil rights complaint. IFP is GRANTED. The portion of the district court's order dismissing Johnson's claims which alleged violations of Due Process and the Eighth Amendment is AFFIRMED for the reasons stated by the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

district court. However, the district court's Final Judgment is VACATED and the matter REMANDED to allow the district court an opportunity to address Johnson's allegation concerning a violation of Equal Protection.

We add our caution to that of the district court; if Johnson's equal-protection allegation is frivolous, he should voluntarily dismiss the claim to avoid the possible imposition, upon remand, of the sanctions the district court warned him about previously.

IFP GRANTED; AFFIRMED IN PART; VACATED AND REMANDED IN PART; SANCTIONS WARNING GIVEN.