

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10865
Summary Calendar

JIMMY ROY DAVIDSON,

Plaintiff-Appellant,

v.

OSCAR STRAIN, ET AL.,

Defendants,

OSCAR STRAIN; RONALD D. DREWRY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(1:95-CV-144-BA)

June 12, 1997

Before KING, JOLLY, and STEWART, Circuit Judges.

PER CURIAM:*

Jimmy Roy Davidson (# 612588) has appealed the district court's dismissal of his claims against the warden and another official of his state prison unit, whom he sued in their official

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

capacity. He requested monetary damages for having been required to serve part of his sentence to cell, property, and commissary restriction although his disciplinary conviction was set aside during that time.

Davidson is not entitled to relief on grounds that these are state-law negligence claims sustainable under supplemental jurisdiction. They are barred by Eleventh Amendment immunity, which the state did not waive by agreeing to a consent decree in another case. See Green v. McKaskle, 788 F. 2d 1116, 1123 (5th Cir. 1986)(no waiver); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 121 (1984)(no pendent jurisdiction). Davidson's claims also are not actionable under 42 U.S.C. § 1983. See Luken v. Scott, 71 F.3d 192, 193-94 (5th Cir. 1995), cert. denied, 116 S. Ct. 1690 (1996).

This court affirmed the dismissal of Davidson's similar claims against other defendants, based on the same disciplinary conviction. Davidson v. Strain, No. 96-10352 (5th Cir. Nov. 21, 1996)(unpublished). In light of that opinion, Davidson's present appeal is frivolous as a matter of law. Because this appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

We caution Davidson that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions Davidson is further cautioned to review any pending appeals to ensure that they do not raise arguments that are

frivolous.

IT IS FURTHER ORDERED that Davidson's motion to strike the appellees' brief is DENIED.

MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.