

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20708
Summary Calendar

KENNETH W. MAGGARD,

Plaintiff-Appellant,

versus

WAYNE SCOTT,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-96-757)

December 20, 1996

Before HIGGINBOTHAM, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Texas state prisoner Kenneth W. Maggard, #536922, appeals the dismissal of his suit pursuant to 28 U.S.C. § 1406(a) for lack of venue. Having reviewed the record and Maggard's brief, we hold that the district court did not abuse its discretion in dismissing

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Maggard's action without prejudice. See *Lowery v. Estelle*, 533 F.2d 265, 267 (5th Cir. 1976).

Because the appeal is frivolous it is DISMISSED. 5th Cir. R. 42.2.¹ We warn Maggard that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, Maggard is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; SANCTION WARNING ISSUED.

¹Maggard's motion for stay pending appeal is also dismissed.