

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40069
Conference Calendar

TERRY D. SMITH,

Plaintiff-Appellant,

versus

JAMES BRADSHAW, Proprietor,
Bradshaw State Jail; J.C. Conner,
Warden, Bradshaw State Jail;
BRADSHAW STATE JAIL,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:95-CV-663
- - - - -

June 26, 1996

Before HIGGINBOTHAM, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Terry D. Smith, Texas prisoner #713234, appeals from the magistrate judge's dismissal of his 42 U.S.C. § 1983 action as frivolous under 28 U.S.C. § 1915(d). Smith argues that the magistrate judge abused her discretion in dismissing his § 1983 action as appellees allowed an argument to escalate and did not

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

stop an attack on Smith by other inmates. Because Smith did not allege that the appellees were aware of a known threat or a substantial risk of serious harm, the magistrate judge did not abuse her discretion in dismissing Smith's failure-to-protect claim as frivolous under § 1915(d). Farmer v. Brennan, 114 S. Ct. 1970, 1976 (1994); Jacquez v. Procnier, 801 F.2d 789, 792 (5th Cir. 1986).

Smith also argues that appellees were deliberately indifferent to his serious medical needs as they failed to provide adequate medical care after the inmate attack. Because Smith's allegations amount to no more than negligence or medical malpractice, the magistrate judge did not abuse her discretion in dismissing Smith's lack-of-adequate-medical-care claim as frivolous under § 1915(d). See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Smith's appeal is without factual or legal basis and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, his appeal is DISMISSED AS FRIVOLOUS. 5th Cir. R. 42.2. We caution Smith that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, Smith 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; SANCTION WARNING ISSUED.