

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40758
Summary Calendar

LARRY DONNELL MCSHAN,

Plaintiff-Appellant,

versus

C. NGUYEN; SHEILA STENNER; L. MCQUEEN;
D. FENNEN; T.L. DOERR; HERBERT SCOTT;
J.D. BALLARD,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. G-92-CV-495
- - - - -

April 4, 1997

Before JONES, DeMOSS and PARKER, Circuit Judges.

PER CURIAM:*

Larry McShan, Texas prisoner # 316724, appeals the district court's dismissal of his 42 U.S.C. § 1983 lawsuit as frivolous. McShan has filed a motion for leave to proceed in forma pauperis (IFP) on appeal. The motion for leave to appeal IFP is GRANTED.

No initial partial filing fee is required. See 28 U.S.C. § 1915(b)(4). However, McShan shall make monthly payments of

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

twenty percent of the preceding month's income credited to his prison account. See 28 U.S.C. § 1915(b)(2). The governmental department having custody of McShan is directed to forward the payments from his prison account to the clerk of the district court each time the amount in his account exceeds \$10, until the filing fee of \$105 is paid. See id.

IT IS FURTHER ORDERED that McShan's application for a certificate of appealability (COA) is DENIED as unnecessary. See 28 U.S.C. § 2253(c).

There is no arguable merit to McShan's contentions that he is entitled to relief on grounds that (1) the district court failed to view his pleadings under less stringent standards than if they had been drafted by an attorney; (2) he was entitled to a hearing as provided in Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985); and (3) the district court should have appointed counsel to represent him. Because McShan's appeal is frivolous, it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.

IFP GRANTED; COA DENIED; APPEAL DISMISSED.