

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40767
Conference Calendar

PHELBERT DE LOS SIMS,

Plaintiff-Appellant,

versus

WAYNE SCOTT ET AL.

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-96-CV-304
- - - - -

April 16, 1997

Before REAVLEY, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM:*

The motion of Phelbert De Los Sims, Texas prisoner #709776, for leave to proceed *in forma pauperis* (IFP) on appeal is GRANTED. Pursuant to the Prison Litigation Reform Act (PLRA), we assess no initial partial filing fee against Sims. However, Sims henceforth shall make monthly payments of twenty percent of the preceding month's income credited to his account. See 28 U.S.C. § 1915(b). The agency having custody of Sims is directed to

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

forward payments from his prisoner account to the clerk of the district court each time the amount in his account exceeds \$10 until the appellate filing fee of \$105 is paid. Id.

Regarding Sims's contentions that prison officials were deliberately indifferent to his serious medical needs, we have reviewed Sims's brief and the record and we find that the district court did not abuse its discretion by dismissing Sims's complaint as frivolous. See Estelle v. Gamble, 429 U.S. 97, 106 (1976); Banuelos v. McFarland, 41 F.3d 232, 234 (5th Cir. 1995). Sims' appeal is without arguable basis and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2. Sims's motion for appointment of counsel on appeal is DENIED. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

His "Motion for Subponia [sic] Duces Tecum Psychiatric/Psychological Evaluation From Appellants Medical Record dated 6-8-95," construed as motion to supplement the record on appeal, is DENIED. His "Motion for Duces Tecum, Subpoenia [sic]" is also DENIED.