

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10478
Conference Calendar

FELIPE AGUIRRE,

Plaintiff-Appellant,

versus

HOWARD F. CLEMENT, Doctor;
HCA MEDICAL PLAZA HOSPITAL,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:97-CV-135-R
- - - - -

October 22, 1997

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

Felipe Aguirre, federal prisoner # 24644-077, appeals the district court's dismissal of his Bivens action pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). He argues that the district court erred in finding that medical negligence is not cognizable in a § 1983 case. However, Aguirre does not challenge the district court's holding that his claim is time-barred, and thus, we do not address the merits of his deliberate indifference claim. We

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

have reviewed the record and the district court's opinion and find no issue of arguable merit. Accordingly, we dismiss the appeal as frivolous. 28 U.S.C. § 1915(e)(2)(B)(i); Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2. Aguirre's motion for appointment of counsel is DENIED.

We caution Aguirre that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Aguirre 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 AS FRIVOLOUS; SANCTION WARNING ISSUED;
MOTION DENIED.