

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40079
Conference Calendar

JAMES ISHMAEL TIBBS,

Plaintiff-Appellant,

versus

TEXAS DEPARTMENT OF CRIMINAL JUSTICE; UNKNOWN THAYER, Warden, in his official capacity; GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, in his official capacity,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:96-CV-321
- - - - -

October 23, 1997

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

PER CURIAM:*

James Ishmael Tibbs, Texas prisoner # 702590, appeals the dismissal of his civil rights complaint as frivolous. Tibbs, proceeding pro se and in forma pauperis, argues that the practice of requiring him to work full time and attend school part time without providing him with more good-time credits than he is

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

earning violates his Fourteenth Amendment rights. Tibbs has failed to demonstrate a constitutional deprivation and thus has no cause of action under 42 U.S.C. § 1983. See Luken v. Scott, 71 F.3d 192, 193 (5th Cir. 1995), cert. denied, 116 S. Ct. 1690 (1996); Wendt v. Lynaugh, 841 F.2d 619, 621 (5th Cir. 1988).

Tibbs' appeal is without arguable merit 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. Tibbs now "has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). Accordingly, Tibbs is barred from proceeding in forma pauperis in a civil action unless he is under imminent danger of serious physical injury. Id.

APPEAL DISMISSED. SANCTION IMPOSED.