

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40487
Summary Calendar

JOHN CRENSHAW,

Plaintiff-Appellant,

versus

THE UNITED STATES OF AMERICA through its agency
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(G-96-CV-342)

February 12, 1998

Before JOHNSON, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

John Crenshaw appeals the dismissal of his complaint pursuant to Fed. R. Civ. P. 12(b)(6) and the denial of his motion for relief from judgment.

First, Crenshaw argues that the district court erred in dismissing his claims of false imprisonment, false arrest, abuse of process, and malicious prosecution for failure to state a claim. This court has undertaken a careful de novo review of the record

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR.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

and the briefs for the parties, accepting all well-pleaded facts as true and viewing those facts in a light most favorable to the plaintiff. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Shinn v. College Station Independent School Dist., 96 F.3d 783, 785 (5th Cir. 1996), cert. denied, 117 S.Ct. 1695 (1997); Campbell v. City of San Antonio, 43 F.3d 973, 975 (5th Cir. 1995). This Court holds that Crenshaw failed to allege all of the elements necessary to obtain relief in his complaint. Accordingly, the district court did not err in finding that he failed to state a claim.

Second, Crenshaw asserts that the district court erred in denying his motion for relief from the judgment and abused its discretion in denying his request for an extension of time for discovery. After a careful review of the record, this Court holds that the district court did not err in denying Crenshaw's motion for relief from the judgment because Crenshaw's complaint had not been amended and therefore, still failed to state a claim upon which relief could be granted. This Court reviews a district court's denial of a request for additional time for discovery for abuse of discretion. Paul Kadair, Inc. v. Sony Corp. of America, 694 F.2d 1017, 1029 (5th Cir. 1983). Crenshaw's complaint was dismissed and his motion for relief from judgment was denied because he failed to state a claim. This deficiency in pleading cannot be cured by additional discovery. Therefore, this Court holds that the district court did not abuse its discretion in denying Crenshaw additional time for discovery.

Finally, Crenshaw argues that the district court erred in failing to treat the Government's motion to dismiss as a motion for more definite statement pursuant to Fed. R. Civ. P. 12(e). However, such treatment is left to the discretion of the district court, and Crenshaw has failed to demonstrate that the district court erred. Crenshaw also argues that he should have been accorded "the opportunity to plead more definitely." After a careful review of the record¹ and the briefs of both parties, this Court holds that Crenshaw's argument is without merit.

This appeal is without arguable merit and therefore is frivolous. See Shinn, 96 F.3d at 786. Because this appeal is frivolous, it is dismissed. See 5th Cir. R. 42.2.

APPEAL DISMISSED.

¹The Government's motion to dismiss was filed on September 30, 1996, and was not granted until March 26, 1997, during which time Crenshaw filed many pleadings but never sought to amend his complaint.