

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20327
Conference Calendar

JAMES EDWARD FLOWERS,

Plaintiff-Appellant,

versus

JAMES A. COLLINS ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:96-CV-2130
- - - - -

February 11, 1999

Before BARKSDALE and EMILIO M. GARZA, Circuit Judges.*

PER CURIAM:**

James Edwards Flowers, Texas prisoner # 588411, appeals the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Flowers argues that the main legal issue in his appeal concerns his allegations that he was denied due process in his disciplinary proceeding. He contends that the

*This matter is being decided by a quorum. 28 U.S.C. § 46(d).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court did not give him the opportunity to amend his complaint or to conduct discovery.

Flowers' claim of a denial of due process at the disciplinary proceeding is not yet cognizable in a § 1983 action. Edwards v. Balisok, 117 S. Ct. 1584, 1588-89 (1997). Thus, there was no need for discovery or an opportunity to amend the complaint to allege additional facts. The district court did not err in dismissing his complaint for failure to state a claim. Black v. Warren, 134 F.3d 732, 733-34 (5th Cir. 1998).

We 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; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

We caution Flowers that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Flowers 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.