

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20774
Conference Calendar

DAVID MUDGE,

Plaintiff-Appellant,

versus

M. CHANEY, MD, Dr. Texas Technical and
Health Sciences; WAYNE SCOTT, Director,
Texas Department of Criminal Justice,
Institutional Division,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-97-CV-228
- - - - -

August 24, 1999

Before KING, Chief Judge, and DAVIS and SMITH, Circuit Judges.

PER CURIAM:*

David Mudge, Texas prisoner #689684, appeals the district
court's dismissal as frivolous under 28 U.S.C.

§ 1915(e)(2)(B)(i), of his 42 U.S.C. § 1983 complaint alleging
deliberate indifference to his serious medical needs.

Mudge's motions for appointment of counsel and motion for

* 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that this opinion should not be published and is not precedent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.

default judgment are DENIED.

The district court did not abuse its discretion in dismissing Mudge's complaint as frivolous. See Norton v. Dimazana, 122 F.3d 286, 291 (5th Cir. 1997). Mudge was seen by several doctors, and he was even referred to an orthopedic specialist. Thus, whatever deficiencies there may have been in Mudge's treatment, if any, certainly do not rise to the level of establishing deliberate indifference on the part of the defendants. See Norton, 122 F.3d at 292.

Mudge's appeal is without merit and therefore 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. The district court's dismissal of the present case and our dismissal of this appeal count as two strikes against Mudge for purposes of 28 U.S.C. § 1915(g). We caution Mudge that once he accumulates three strikes, he may not proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.