

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-30400
Conference Calendar

LEROY BELL,

Plaintiff-Appellant,

versus

TERRY TERRELL; BETTY DUPLICHAN; RICHARD STALDER,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 97-CV-2080
- - - - -

October 22, 1998

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

PER CURIAM:*

Leroy Bell (#98257), a state prisoner, has appealed the district court's judgment dismissing his civil rights complaint as frivolous. A district court may dismiss a claim as frivolous if it lacks an arguable basis in law or fact. Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997); see 28 U.S.C. § 1915(e)(2)(B)(i). A dismissal under § 1915(e)(2)(B)(i) is reviewed for an abuse of discretion. Siglar, 112 F.3d at 193.

Bell was struck by a falling tree while on a work detail. Bell argues that his right to be free from cruel and unusual

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

punishment under the Eighth Amendment was violated because of the negligent acts of prison personnel in failing to properly train other inmates in safety procedures and in failing to provide adequate medical care for his injuries. Unsuccessful medical treatment, acts of negligence, neglect, or medical malpractice are insufficient to give rise to a § 1983 cause of action.

Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Essentially for reasons adopted by the district court, we hold that the district court did not abuse its discretion in dismissing the complaint as legally frivolous. See Bell v. Terrell, No. 97-CV-2080 (W.D. La. Apr. 1, 1998) (unpublished).

Because the appeal is frivolous, it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

Bell is informed that the dismissal of his complaint as frivolous by the district court, and the dismissal of his appeal as frivolous, each constitute a "strike" under the "three-strike" provision of 28 U.S.C. § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.