

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40260
Conference Calendar

MARCUS M. PRUITT,

Plaintiff-Appellant,

versus

REED SMITH, Warden, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:97-CV-528
- - - - -

June 16, 1999

Before EMILIO M. GARZA, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:*

Marcus Pruitt (TDCJ # 735863) appeals the dismissal of his pro se and in forma pauperis (IFP) civil rights complaint wherein he alleged that his Due Process and Eighth Amendment rights were violated when he was kept on "transient" housing status for more than 30 days in violation of prison policy. Pruitt argues that the magistrate judge's reliance on Sandin v. Conner, 515 U.S. 472 (1995) to dismiss his due-process claim was inappropriate because the magistrate judge failed to properly determine whether the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

conditions complained of imposed an "atypical" hardship on him. He also argues that the magistrate judge failed to properly construe the nature of his Eighth Amendment claims.

Pruitt has failed to demonstrate that the magistrate judge either erred or abused his discretion by dismissing his Due Process claim as frivolous and for failure to state a claim. See 28 U.S.C. § 1915(e)(2)(B)(i) & (ii); Black v. Warren, 134 F.3d 732, 734 (5th Cir. 1998). Nor does he identify any error in the magistrate judge's conclusion that his Eighth Amendment claim did not meet the criteria of Farmer v. Brennan, 511 U.S. 825 (1994).

AFFIRMED. ALL OUTSTANDING MOTIONS DENIED.