

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40832
Conference Calendar

L.T. ROBERSON,

Plaintiff-Appellant,

versus

DAN MORALES; ORLANDO PEREZ; KELLIE R. ANDREWS;
JOANN DAVIS,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-98-CV-135
- - - - -

April 16, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:*

L.T. Roberson, Texas prisoner #705264, appeals from the dismissal of his civil rights action as frivolous. Roberson contends that the magistrate judge erred by dismissing his complaint as frivolous and that his constitutional rights were violated by a fax transmission of a legal document and the opening of his legal mail outside of his presence. Roberson asserts, with no elaboration, that the defendants conspired against him. Roberson moves for a temporary injunction and 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

an order compelling the appellees to answer written interrogatories. Roberson's motions are DENIED.

Roberson does not allege that his position as a litigant was prejudiced by the fax transmission or the opening of his legal mail; Roberson must prove that he was prejudiced to show a constitutional violation. *Walker v. Navarro County Jail*, 4 F.3d 410, 413 (5th Cir. 1993). Roberson makes no factual or legal arguments to support his conspiracy assertion. He has failed to brief that issue for appeal. *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Roberson's appeal is without arguable merit and is frivolous. Accordingly, the appeal is DISMISSED. 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). We caution Roberson that once he accumulates three strikes, he may not proceed *in forma pauperis* (IFP) in any civil action or appeal filed while he is in prison unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; WARNING ISSUED.