

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-41118  
Conference Calendar

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WILLIAM PEÑA,

Plaintiff-Appellant,

versus

UNKNOWN QUACKENBUSH, Dr., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. G-97-CV-620  
- - - - -

April 19, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:\*

William Peña, Texas inmate # 619877, appeals the district court's dismissal as frivolous of his 42 U.S.C. § 1983 complaint. Peña contended in the district court that he was treated unnecessarily with drugs for a mental illness when his condition required treatment only for epileptic seizures. Peña contended that his condition deteriorated as a result of the drug treatment and eventually required hospitalization for dehydration.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We have reviewed the record and Peña's brief and affirm the decision of the district court under 28 U.S.C. § 1915A for essentially the reasons stated by the district court. See *Peña v. Quackenbush et al.*, No. G-97-620 (S.D. Tex. Jul. 20, 1998).

Peña contends for the first time in this court that the defendants forcibly administered psychotropic drugs. Peña's allegation involves factual issues, which were capable of resolution by the district court, and which cannot rise to the level of plain error. See *United States v. Vital*, 68 F.3d 114, 119 (5th Cir. 1995); *Gabel v. Lynaugh*, 835 F.2d 124, 125 (5th Cir. 1988) ("Generally speaking, we are a court of errors and appeals; and the trial court cannot have erred as to matters which were not presented to it."). Accordingly, the decision of the district court is AFFIRMED.

AFFIRMED.