

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-10619  
Conference Calendar

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ABELARDO D. LOPEZ,

Plaintiff-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, INSTITUTIONAL DIVISION; JOHN WEATHERLY, Supervisor,  
Boot Factory Clements Unit, Texas Department of Criminal  
Justice,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:97-CV-194  
- - - - -  
April 11, 2000

Before WIENER, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Abelardo D. Lopez, Texas prisoner # 714768, appeals from the dismissal of his civil-rights complaint, filed pursuant to 42 U.S.C. § 1983, as frivolous and for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A dismissal of a complaint as frivolous under § 1915(e)(2)(B)(i) is reviewed for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

an abuse of discretion, and a dismissal for failure to state a claim under § 1915(e)(2)(B)(ii) is reviewed de novo. See Ruiz v. United States, 160 F.3d 273, 275 (5th Cir. 1998).

Lopez's allegations fail to show that the defendants acted with deliberate indifference to a substantial risk of serious harm. See Farmer v. Brennan, 511 U.S. 825, 838 (1994). His claim was therefore properly dismissed as frivolous and for failure to state a claim upon which relief could be granted. This appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The appeal is DISMISSED. See 5TH CIR. R. 42.2.