

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-11337
Conference Calendar

SAMMIE LEE SEXTON,

Plaintiff-Appellant,

versus

BOBBY ROSS GROUP, Dickens County Correctional Center; COBY
TRUHLICKA,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:99-CV-227-C
- - - - -

June 13, 2000

Before JOLLY, DAVIS, and STEWART, Circuit Judges.

PER CURIAM:*

Sammie Lee Sexton, Texas prisoner # 783335, appeals from the dismissal with prejudice of his civil-rights lawsuit, filed pursuant to 42 U.S.C. § 1983, alleging that the defendants caused the loss of his gold necklace. The district court dismissed his lawsuit pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) as frivolous and for failure to state a claim upon which relief may be granted. A dismissal under § 1915(e)(2)(B)(i) is reviewed for abuse of discretion, and a dismissal under § 1915(e)(2)(B)(ii) is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

reviewed de novo. See Ruiz v. United States, 160 F.3d 273, 275 (5th Cir. 1998).

Sexton's claims are not cognizable under § 1983. See McGruder v. Will, 204 F.3d 220, 222 (5th Cir. 2000)(misconduct of state officials is not actionable under § 1983 in Texas because adequate state post-deprivation remedies exist); Murphy v. Collins, 26 F.3d 541, 543-44 (5th Cir. 1994)(same). The district court's dismissal was therefore proper.

Sexton's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it 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), as does the district court's dismissal. See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). We warn Sexton that if he accumulates one more "strike" under § 1915(g), he will not be able to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

APPEAL DISMISSED.