

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-21098
Conference Calendar

SAMMIE LEE,

Plaintiff-Appellant,

versus

RODNEY L. COLEMAN; M.B. THALER,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CV-1079

June 15, 2000

Before JOLLY, DAVIS, and DUHÉ, Circuit Judges.

PER CURIAM:*

Sammie Lee, *pro se* Texas prisoner # 401975, appeals the district court's dismissal as frivolous and for failure to state a claim of his 42 U.S.C. § 1983 complaint in which he alleged that a prison guard verbally abused him, pushed him against a wall, and choked him, causing physical and mental injuries. The district court did not abuse its discretion in determining that Lee's claims are frivolous as the injuries he alleged are at most *de minimis*. See Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). Therefore, he cannot maintain a claim for excessive force

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

under the Eighth Amendment nor can he maintain a claim for mental or emotional injury. See id. at 193-94. To the extent Lee asserts claims of verbal abuse, such claims are not cognizable under § 1983. See Bender v. Brumley, 1 F.3d 271, 274 n.4 (5th Cir. 1993).

Lee raises additional arguments on appeal under the Fourth and Fourteenth Amendments and the Texas Penal Code. These arguments were not raised in the district court, and we decline to address them on appeal. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993).

For the foregoing reasons, we dismiss Lee's appeal as frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). The district court's dismissal of Lee's complaint and this court's dismissal of the appeal as frivolous count as two "strikes" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Lee is CAUTIONED that if he accumulates three "strikes" under § 1915(g), he will not be able to proceed IFP 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 28 U.S.C. § 1915(g).

APPEAL DISMISSED; SANCTIONS WARNING ISSUED.