

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20163
Summary Calendar

IVO NABELEK,

Plaintiff-Appellant,

versus

WAYNE SCOTT, Director, Texas Department of Criminal
Justice; GARY JOHNSON, Director, Texas Department of
Criminal Justice; JAMES ZELLER, Senior Warden,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(H-00-CV-3396)

July 30, 2001

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Proceeding *pro se* and *in forma pauperis* (IFP), Ivo Nabelek, Texas prisoner # 669748, appeals the dismissal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), of his civil rights complaint brought pursuant to 42 U.S.C. § 1983.

The district court did not abuse its discretion by dismissing as frivolous Nabelek's involuntary-servitude claim and related *ex post facto* challenge. See ***Ali v. Johnson***, No. 00-10777, 2001 WL ____ (5th Cir. 11 July 2001); see also ***Lynce v. Mathis***, 519 U.S. 433,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

441 (1997). The district court's failure to specifically address Nabelek's passing reference to a cruel-and-unusual-punishment aspect of his involuntary-servitude claim is harmless, as prison work assignments alone do *not* violate the Eighth Amendment. See **Mendoza v. Lynaugh**, 989 F.2d 191, 195 (5th Cir. 1993). Finally, the district court did *not* err by denying Nabelek's motion for a preliminary injunction and his request that payment of the appellate filing fee be deferred until after this court addressed the merits of his appeal. See **Lakedreams v. Taylor**, 932 F.2d 1103, 1107 (5th Cir. 1991); 28 U.S.C. § 1915(b)(1).

Having considered these and the numerous related issues raised, we conclude there is no reversible error.

The district court's dismissal counts as a strike for purposes of 28 U.S.C. § 1915(g). See **Adepegba v. Hammons**, 103 F.3d 383, 387 (5th Cir. 1996). Nabelek is **WARNED** that if he accumulates three strikes, he may *not* proceed IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

AFFIRMED; SANCTIONS WARNING ISSUED