

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-60366
Summary Calendar
Lower Court No. 1:99-CV-571

KENNETH SMITH,

Plaintiff-Appellant,

v.

INTERNATIONAL PAPER COMPANY,
BRIAN HUTSON and EARLIE THOMAS,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi

October 10, 2001

Before JONES, SMITH and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:¹

Kenneth Smith appeals the district court's summary judgment order dismissing his Title VII and negligence claims. Smith concedes that he failed to comply with company procedures for shutdown of the machine on which he worked to enable routine maintenance. Smith's failure to follow company procedures created

¹ 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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

a dangerous environment for his co-workers. Additionally, it is undisputed that Smith's performance record contained several disciplinary actions in lieu of discharge, and that Smith was warned that future violations of company procedures would result in termination. These facts constitute a legitimate, non-discriminatory reason for Smith's termination, and Smith has offered no evidence of pretext, nor has he proved that his black coworkers were in a similar position to him when they received less harsh punishment. Therefore, Smith's Title VII claim fails. See Sreeram v. Louisiana State Univ. Med. Center-Shreveport, 188 F.3d 314, 318 (5th. Cir. 1999) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801-03 (1973)).

To establish his additional claim of negligence against the coworkers, Smith must offer evidence establishing duty, breach, causation and damages. Palmer v. Anderson Infirmary Benevolent Assoc., 656 So.2d 790, 793 (Miss. 1995). Smith has failed to present evidence establishing a duty owed to him by Thomas and Hutson . Even if Thomas and Hutson owed Smith a duty, Smith has failed to prove that there was a breach of this duty which caused Smith's termination. The district court appropriately dismissed Smith's negligence claims.

We **AFFIRM** the summary judgment order entered by the district court for the reasons stated in its comprehensive opinion.

