IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41262
Conference Calendar

WESLEY L. PITTMAN, a/k/a
Kaazim Abdul Umar,

Plaintiff-Appellant,

versus

JAMES SHAW, Senior Warden, ET AL.,

Defendants,

ROBERTO GARCIA, CO III, and
ANN CONRAD, Officer,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:92-CV-375
- - - - - - - - - - -
(October 19, 1995)

Before POLITZ, Chief Judge, and REAVLEY and SMITH, Circuit Judges.

PER CURIAM:*

Wesley L. Pittman, a/k/a Kaazim Abul Umar, challenges the jury's finding that Defendants Conrad and Garcia are not liable to him for damages pursuant to 42 U.S.C. § 1983. Pittman also

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

challenges the district court's denial of his motion in limine pertaining to evidence of his prior convictions.

An appellant, even one pro se, who wishes to challenge findings or conclusions that are based on testimony at a hearing has the responsibility to order a transcript. Fed. R. App. P. 10(b); Powell v. Estelle, 959 F.2d 22, 26 (5th Cir.), cert. denied, 113 S. Ct. 668 (1992). "The failure of an appellant to provide a transcript is a proper ground for dismissal of the appeal." Richardson v. Henry, 902 F.2d 414, 416 (5th Cir.), cert. denied, 498 U.S. 901 (1990) (citation omitted). The validity of the jury's verdict and whether the court erred when it denied Pittman's motion in limine depend on a trial transcript for their resolution. Pittman has failed to provide a transcript. These issues are DISMISSED.

Pittman also argues that his claims of cruel and unusual punishment and retaliation should not have been dismissed as frivolous pursuant to 28 U.S.C. § 1915(d). Pittman has not shown that prison officials were deliberately indifferent to prison living conditions. See Wilson v. Seiter, 501 U.S. 294, 303 (1991). Pittman in essence alleges negligence, which is insufficient to give rise to a cause of action under § 1983. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Thus, his claim of cruel and unusual punishment lacks a basis in law or fact.

Pittman's allegation of retaliation is likewise without a basis in law or fact. "[I]f the conduct claimed to constitute retaliation would not, by itself, raise the inference that such

conduct was retaliatory, the assertion of the claim itself without supporting facts is insufficient." Whittington v. Lynaugh, 842 F.2d 818, 819 (5th Cir.), cert. denied, 488 U.S. 840 (1988). A temporal proximity between complaints about living conditions and Pittman's move to Super Segregation, without more, does not support an inference that the defendants' conduct was retaliatory. Therefore, the district court did not abuse its discretion when it dismissed his claims of cruel and unusual punishment and retaliation under § 1915(d). As the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

Although this is Pittman's fourth frivolous appeal in just over two years, we do not now sanction him. We caution Pittman, however, that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, Pittman is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous because they have been previously decided by this court.