

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10051
Summary Calendar

ROBERT MITCHELL ALEXANDER,

Plaintiff-Appellant,

versus

CARY J. COOK, Assistant Warden; TERRY T. SLITTER,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(1:02-CV-72-C)

Before DAVIS, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Robert Mitchell Alexander, Texas prisoner No. 830440, appeals the district court's dismissal as frivolous of his civil rights complaint. Alexander's district court complaint challenged the constitutionality of a prison disciplinary conviction, asserting that the defendants violated his right to freedom of speech and subjected him to cruel and unusual punishment by disciplining him for exercising his First Amendment rights.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

On appeal, Alexander has abandoned his argument that his disciplinary conviction is unconstitutional. Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993)(28 U.S.C. § 2254 case); FED. R. APP. P. 28(a)(9)(A). His assertion of a First Amendment violation is meritless. See Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 125 (1977); Hernandez v. Estelle, 788 F.2d 1154, 1158 (5th Cir. 1986). For the first time on appeal, Alexander argues that a delay in his receipt of medical treatment violated the Eighth Amendment. As Alexander did not raise this claim in the district court, we review it for plain error, and we perceive none. See Kinash v. Callahan, 129 F.3d 736, 739 n.10 (5th Cir. 1997).

AFFIRMED.