

March 16, 2006

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-11179
Summary Calendar

MICHAEL C. WHITING,

Plaintiff-Appellant,

versus

BETTY ALVARADO; BRIAN PIERCE; JAMES HOWARD;
MIKE ROWLAND; TED MOORE; JULIE PACHECHO;
THERESA HENDRICK; FRANK POHLMEIER; RUBY WARREN;
HERMAN WESTON, JR.; KELLI WARD; JANIE COCKRELL;
DEBRA LILES,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(2:03-CV-53)

Before BARKSDALE, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

Michael C. Whiting, Texas state prisoner # 670716, appeals, pro se, dismissal of his 42 U.S.C. § 1983 complaint, presenting due process and retaliation claims in connection with prison disciplinary proceedings. Whiting paid the district court filing fee and has paid the appellate filing fee. Whiting's complaint was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

dismissed in part as frivolous under 42 U.S.C. § 1997e(c)(1); the retaliation claims were dismissed for failure to effect timely service pursuant to FED. R. CIV. P. 4(m).

Dismissal of the due process claims was proper because Whiting did not assert the deprivation of a constitutionally protected liberty interest. **Sandin v. Conner**, 515 U.S. 472, 484 (1995). The district court did not abuse its discretion in dismissing Whiting's retaliation claims against Pierce and Alvarado on the ground that Whiting failed to timely serve them. See FED. R. CIV. P. 4(m).

Whiting seeks to appeal the denial of his motion for a temporary restraining order. Such denial is not appealable. **In re Lieb**, 915 F.2d 180, 183 (5th Cir. 1990).

Whiting's motion to proceed *in forma pauperis* on appeal is **DENIED.**

AFFIRMED; MOTION DENIED