

March 16, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10418
Summary Calendar

BUI PHU XUAN, also known as Phi Xuan Bui,

Plaintiff-Appellant,

versus

FORT WORTH/TARRANT COUNTY DEPARTMENT OF HEALTH; LOU K. BREWER,
Director of Fort Worth/Tarrant County Health Department

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:05-CV-370

Before DeMOSS, STEWART and PRADO, Circuit Judges.

PER CURIAM:*

Bui Phan Xuan filed the instant 42 U.S.C. § 1983 suit to seek redress for damages caused when he was falsely informed that he was HIV positive. The district court determined that the suit was frivolous and/or failed to state a claim and dismissed it. Xuan appeals the dismissal of his suit. He argues that his suit is timely, that his claims are valid, and that the district court erred by dismissing his suit prior to service upon the defendants and discovery.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Xuan has failed to show that the defendants infringed his constitutional rights. See Shinn v. College Station Indep. Sch. Dist., 96 F.3d 783, 786 (5th Cir. 1996) (per curiam). Consequently, the district court did not err by dismissing his suit. See Johnson v. Dallas Indep. Sch. Dist., 38 F.3d 198, 200 (5th Cir. 1994); see also Harper v. Showers, 174 F.3d 716, 719 (5th Cir. 1999). The judgment of the district court is AFFIRMED, and Xuan's motion for the appointment of counsel is DENIED.