

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4245
Conference Calendar

ROBERT CLARK,

Plaintiff-Appellant,

versus

OFFICER TREADWAY ET AL.,

Defendants,

OFFICER TREADWAY,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:88cv650
- - - - -

(January 27, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Robert Clark appeals the dismissal of his civil rights suit brought under 42 U.S.C. § 1983. Clark's appellate brief is an argument on the facts, reurging that he proved his case and should prevail on the strength of his evidence. The argument is inappropriate.

"`An appellate Court is in no position to weigh conflicting evidence and inferences or to determine the credibility of

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

witnesses; that function is within the province of the finder of fact.'" Martin v. Thomas, 973 F.2d 449, 453 n.3 (5th Cir. 1992) (citation omitted).

Clark also argues that he was deprived of ineffective assistance of counsel at trial. The Sixth Amendment right to effective assistance of counsel does not apply in civil litigation. Sanchez v. U.S. Postal Service, 785 F.2d 1236, 1237 (5th Cir. 1986).

This appeal is without arguable merit and thus, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

APPEAL DISMISSED.