

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20198
Conference Calendar

LARRY DONNELL MCSHAN,

Plaintiff-Appellant,

versus

SAM YOUNG and
CHARLES DANIEL ADAMS, MD,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-3735
- - - - -
(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Larry Donnell McShan is not entitled to proceed in forma pauperis (IFP) on appeal because his appeal does not present a non-frivolous legal issue. Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986).

McShan's claims concerning his treatment after his 1990 surgery are frivolous because they are time-barred. Ali v. Higgs, 892 F.2d 438, 439 (5th Cir. 1990); Tex. Civ. Prac. & Rem. Code § 16.003(a) (West 1986); see also Burrell v. Newsome, 883

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

F.2d 416, 418 (5th Cir. 1989). McShan's October 1992 injury resulted from his poor judgment rather than the defendants' deliberate indifference to a serious medical need. McShan's disagreement with Dr. Adams' decision not to prescribe pain medication for that injury does not implicate a constitutional violation. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

The district court's use of a questionnaire to flesh out the substance of McShan's complaint was an acceptable alternative to holding a Spears** hearing. Parker v. Carpenter, 978 F.2d 190, 192 n.2 (5th Cir. 1992). The district court did not abuse its discretion by failing sua sponte to appoint counsel for McShan. Ulmer v. Chancellor, 691 F.2d 209, 212-13 (5th Cir. 1982).

McShan's motion to appeal IFP is DENIED. The appeal, which is frivolous, is DISMISSED. 5th Cir. R. 42.2.

** Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).