

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-21031
Summary Calendar

BERTRAND J. TUCKER,

Plaintiff-Appellant,

versus

CALVIN TUCKER, T. ESPARZA,
MICHAEL W. COUNTZ, Warden,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-2975
- - - - -

July 16, 1996

Before HIGGINBOTHAM, EMILIO M. GARZA, and BENAVIDES, Circuit
Judges.

PER CURIAM:*

Bertrand J. Tucker, TDCJ No. 559631, appeals the district
court's dismissal of his 42 U.S.C. § 1983 action. Tucker
contends that he alleged sufficient facts demonstrating that the
defendants were deliberately indifferent to his serious medical
needs when they delayed a needed operation for several months by
removing him for a minor transgression on his part from a bus
line that would have transferred him to the hospital. Because

Pursuant to Local Rule 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this opinion should not be published and is not precedent except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 Local Rule 47.5.4.

the evidence presented at Tucker's Spears hearing demonstrates that his condition did not constitute a serious medical need, Tucker did not allege a constitutional violation of the denial of medical treatment. See Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). The district court did not abuse its discretion in dismissing the complaint as frivolous. The motion for a jury trial is DENIED.

AFFIRMED.