

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20064
Summary Calendar

SAMUEL CHARLES VANNESS, IV,

Plaintiff-Appellant,

versus

JAMES BENNETT,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-94-4061
- - - - -

August 28, 1996

Before JOLLY, JONES and STEWART, Circuit Judges.

PER CURIAM:*

Samuel Charles VanNess, IV, # 725945, appeals from the dismissal of his civil rights suit for failure to effectuate proper service. For the first time on appeal, VanNess contends that his failure to effect service was due to the failures of the U.S. Marshal and court clerk to perform the duties required of them. This alleged error, involving questions of fact, does not

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

rise to the level of plain error. See Robertson v. Plano City of Texas, 70 F.3d 21, 23 (5th Cir. 1995).

VanNess's appeal is frivolous and is DISMISSED. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); see 5th Cir. R. 42.2. We caution appellant that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, appellant is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous because they have been previously decided by this court.

APPEAL DISMISSED; SANCTIONS WARNING ISSUED.