

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40961

CHARLES C. DAVIS,

Plaintiff-Appellant,

versus

GARY JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION; JOHN STICE; MARSHALLO HERKLOTZ; C. T.
O'REILLY; H. D. JOHNSON, M. D.; E. MURPHY, Sgt.; P. TAYLOR,
Officer; RETRIEVE UNIT; NURSE AIDE, Infirmary; WILSON, Mrs.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. G-95-CV-154
- - - - -

March 12, 1997

Before SMITH, DUHE', and BARKSDALE, Circuit Judges.

PER CURIAM:*

Charles C. Davis, Texas prisoner # 653273, appeals the dismissal of his civil rights complaint as frivolous. He has filed a motion for leave to proceed in forma pauperis (IFP) on appeal. The motion for leave to appeal IFP is GRANTED.

Davis is not required to pay an initial partial filing fee; however, he shall make monthly payments of twenty percent of the preceding month's income credited to his account. See 28 U.S.C.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

§ 1915(a) The agency having custody of Davis is directed to forward payments from his prisoner account to the clerk of the district court each time the amount in his account exceeds \$10 until the filing fee is paid. See id.

Davis filed his complaint against the defendants in their official capacities. Because a decree against personnel of the Texas Department of Criminal Justice operates against the sovereign, the suit is barred by the Eleventh Amendment. See Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100-01 (1984); Hawaii v. Gordon, 373 U.S. 57, 58 (1963) (per curiam); Harris v. Angelina County, Tex., 31 F.3d 331, 337-38 n.7 (5th Cir. 1994).

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

APPEAL DISMISSED.