

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10180
Conference Calendar

JAMES MCCARTER,

Plaintiff-Appellant,

versus

MARTIN A. LEET, TDCJ Clements Unit Employee,

Defendant-Appellee.

JAMES MCCARTER,

Plaintiff-Appellant,

versus

JOHN A. CONNELLY, JR., TDCJ Clements Unit
Officers of Transportation Department;
PAUL T. GEORGE, TDCJ Clements Unit
Officers of Transportation Department,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:94-CV-8 & 2:94-CV-9
- - - - -

February 11, 1998

Before SMITH, EMILIO M. GARZA, and DeMOSS, Circuit Judges.

PER CURIAM:*

James McCarter (TDCJ #498365) appeals the jury verdict in favor of the defendants in his civil rights suit. McCarter,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

however, merely reargues the merits of why he believes the defendants violated his Eighth Amendment rights.

As reflected by its verdict, the jury obviously credited the testimony of the defendants over that of McCarter. This court will not disturb such choice on appeal. See Martin v. Thomas, 973 F.2d 449, 453 & n.3 (5th Cir. 1992). Insofar as McCarter challenges the weight of the evidence supporting the jury verdict, this court is unable to review such a claim without the transcript. See Coats v. Penrod Drilling Corp., 5 F.3d 877, 890 (5th Cir. 1993), reh'g en banc granted, 20 F.3d 614 (1994), opinion reinstated in pertinent part, 61 F.3d 1113, 1118 (1995).

Because there is no issue of arguable merit, the appeal is DISMISSED as frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2. We caution McCarter that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, McCarter is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; SANCTION WARNING ISSUED.