

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CHARLIE SPEARS (#79473)

CIVIL ACTION

VERSUS

15-11-SDD-RLB

SHELTON SCALES, ET AL.

RULING AND ORDER

This matter comes before the Court on the Plaintiff's *Motion for Restraining Order or Preliminary Injunction*.¹ The *pro se* Plaintiff, an inmate incarcerated at the Louisiana State Penitentiary ("LSP"), Angola, Louisiana, filed this proceeding pursuant to 42 U.S.C. § 1983 against Shelton Scales, a correctional officer, and former warden Burl Cain, in their individual and official capacities, complaining that his constitutional rights have been violated as a result of exposure to second hand smoke and due to the handling of his administrative grievance regarding the same. The Defendants filed a *Motion to Dismiss* which was granted on May 4, 2016.² Thereafter, the Plaintiff filed a *Notice of Appeal*.³

The Plaintiff's pending Motion seeks an *Order* directing prison officials to preserve video tapes which purportedly show smoking in the dorms. However, "the filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."⁴ As such, the Plaintiff's Motion will be dismissed for lack of jurisdiction, reserving the Plaintiff's right to re-urge the Motion after the United States Fifth Circuit Court of Appeal issues its ruling on the Plaintiff's pending appeal.

¹ Rec. Doc. 32.

² See Rec. Docs. 19, 22, and 23.


³ Rec. Doc. 27.

⁴ *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

Accordingly,

IT IS HEREBY ORDERED that the Plaintiff's *Motion for Restraining Order or Preliminary Injunction*⁵ is **DISMISSED** for lack of jurisdiction, reserving the Plaintiff's right to re-urge the Motion after the United States Fifth Circuit Court of Appeal issues its ruling on the Plaintiff's pending appeal.

Baton Rouge, Louisiana the 10 day of August, 2016.



**SHELLY D. DICK, DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA**

⁵ Rec. Doc. 32.