

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-11066  
Conference Calendar

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CHRIS MCFARLAND,

Plaintiff-Appellant,

versus

NFN UTTER, Correctional Officer III;  
NFN THOMPSON, Correctional Officer III;  
NFN BOYD, Correctional Officer III,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:00-CV-271  
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February 14, 2001

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

PER CURIAM:\*

Chris McFarland, Texas prisoner # 627844, appeals from the district court's sua sponte dismissal of his 42 U.S.C. § 1983 civil rights complaint as frivolous. McFarland alleged that the defendants stole and/or failed to return his personal property, consisting of a gold chain, gold cross, and watch. The district court did not abuse its discretion in concluding that McFarland's claim for the deprivation of his personal property was frivolous. See Harper v. Showers, 174 F.3d 716, 718 & n.3 (5th Cir. 1999).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

As Texas has an adequate postdeprivation remedy for confiscation of prisoner property, McFarland may not raise this claim in a 42 U.S.C. § 1983 action. Cathey v. Guenther, 47 F.3d 162, 164 (5th Cir. 1995); Murphy v. Collins, 26 F.3d 541, 543 (5th Cir. 1994).

McFarland's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2. McFarland's motion seeking evidence related to his 42 U.S.C. § 1983 claim is DENIED.

The dismissal of this appeal and the dismissal as frivolous by the district court each count as a "strike" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). McFarland, therefore, has two "strikes" under 28 U.S.C. § 1915(g). We caution McFarland that once he accumulates three strikes, he may not proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; MOTION DENIED; SANCTIONS WARNING ISSUED.