

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-11523
Conference Calendar

TYRONE FRED HINES,

Plaintiff-Appellant,

versus

RYCE, Physician Assistant Certified; NO FIRST
NAME CALDWELL, Nurse Practitioner,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:00-CV-254

April 11, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

Tyrone Ford Hines, Texas prisoner # 716708, appeals the dismissal of his civil rights suit pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Hines's claim that his work assignment constituted cruel and unusual punishment amounts to a claim of negligence, which is not cognizable under 42 U.S.C. § 1983. See Wilson v. Budney, 976 F.2d 957, 958 (5th Cir. 1992). Likewise, Hines's claim that his due process rights were violated at a disciplinary hearing is without merit given that the disciplinary

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

finding has not been expunged. See Heck v. Humphrey, 512 U.S. 477, 486 (1994); Edwards v. Balisok, 520 U.S. 641, 646-48 (1997). Thus, the magistrate judge's dismissal of these claims as frivolous was not an abuse of discretion. See Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997).

The instant appeal is frivolous, and it is dismissed. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. The district court's dismissal of Hines's suit counts as a strike under the Prison Litigation Reform Act, as does this court's dismissal of this appeal. See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996); 28 U.S.C. § 1915(g). Hines is hereby warned that if he accumulates three "strikes" under 28 U.S.C. § 1915(g) he will not be able to 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.

APPEAL DISMISSED; SANCTION WARNING ISSUED.