

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20913
Conference Calendar

WARDELL MOORE,

Plaintiff-Appellant,

versus

JAMES VANICEK; RICK BOHLMANN,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-99-CV-4133

February 21, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Wardell Moore ("Moore"), Texas state prisoner # 845237, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint. Moore argues that he was falsely arrested and subsequently maliciously prosecuted. The district court did not abuse its discretion in dismissing Moore's complaint as frivolous. See Brown v. Board of Commr's of Bryan County, Ok., 67 F.3d 1174, 1180 (5th Cir. 1995); Price v. Roark, 256 F.3d 364, 370 (5th Cir. 2001).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Moore'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. 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). Moore therefore has two "strikes" under 28 U.S.C. § 1915(g). We caution Moore 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; SANCTIONS WARNING ISSUED.