

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40268
Conference Calendar

LEONDRUS MCBRIDE, JR.,

Plaintiff-Appellant,

versus

NORMAN TOWNSEND, In his personal and official capacity;
JIMMY SINGLETERRY, In his personal and official capacity;
JIMMY RILEY, In his personal and official capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:01-CV-3

June 18, 2002

Before HIGGINBOTHAM, DAVIS, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Leondrus McBride, Jr., federal prisoner No. 04496-078, appeals the district court's dismissal as time-barred of his complaint raising 42 U.S.C. § 1983 and Bivens** claims. We find no abuse of discretion in the district court's dismissal of the complaint.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

** Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

McBride's appeal is thus 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). McBride, therefore, has two "strikes" under 28 U.S.C. § 1915(g). We caution McBride 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.