

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-41167  
Conference Calendar

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PAUL HAROLD RICE,

Plaintiff-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT  
OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION;  
COURT OF CRIMINAL APPEALS OF TEXAS, Supreme  
Court Building, Austin, Texas 78711; DENTON  
COUNTY DISTRICT CLERK, 362<sup>nd</sup> District Court  
of Denton County, Texas,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:00-CV-281  
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April 11, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Paul Harold Rice, Texas inmate #900007, appeals the district court's denial of his motion for a preliminary injunction. Rice's motion for leave to supplement his corrected appellate brief is GRANTED.

Rice's appellate argument is moot in light of the district court's dismissal of his 42 U.S.C. § 1983 suit. A preliminary injunction cannot survive the dismissal of a complaint. 11A

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\* Pursuant to 5<sup>TH</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 2947 at 126 n.19 (2d ed. 1995)(citing Venezia v. Robinson, 16 F.3d 209, 211 (7th Cir. 1994).

Rice's appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d. 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5TH CIR. R. 42.2.

The district court's dismissal of Rice's 42 U.S.C. § 1983 complaint for failure to state a claim upon which relief could be granted counts as a "strike" under 28 U.S.C. § 1915(g). Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). The dismissal of the instant appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). Adepegba, 103 F.3d at 387-88. Rice accumulated two strikes in Rice v. Line, No. 01-40320 (5th Cir. Dec. 11, 2001). Adepegba, 103 F.3d at 387-88. Because he has at least three strikes, Rice is barred hereafter from proceeding 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. 28 U.S.C. § 1915(g).

APPEAL DISMISSED AS FRIVOLOUS; MOTION GRANTED; 28 U.S.C. § 1915(g) BAR IMPOSED.