

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-50286
Conference Calendar

GEORGE OCHOA VELEZ,

Plaintiff-Appellant,

versus

WILLIAM O'BRIEN, MD;
GARY L. JOHNSON, UNKNOWN STAFF,
at the John Seally Hospital,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-01-CV-5

October 25, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

George Ochoa Velez ("Velez"), Texas prisoner # 532640, has filed a motion for leave to proceed in forma pauperis ("IFP") on appeal following the district court's decision to dismiss his 42 U.S.C. § 1983 complaint for want of prosecution and as frivolous for failure to state a claim. By moving for IFP status, Velez is challenging the district court's certification that IFP status should not be granted on appeal because his appeal is not taken

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997).

Velez has failed to show that his appeal of the district court's dismissal of his complaint as frivolous is taken in good faith. His request for IFP status is DENIED. See Baugh, 117 F.3d at 202. Furthermore, because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2.

The dismissal of Velez' complaint as frivolous and the dismissal of this appeal as frivolous each count as a strike for purposes of 28 U.S.C. § 1915(g). See Patton v. Jefferson Corr. Ctr., 136 F.3d 458, 462-64 (5th Cir. 1998); Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Velez has already accumulated two prior strikes. See Velez v. Collins, No. 2:92-CV-252 (S.D. Tex. June 4, 1996), and Velez v. Collins, No. 2:94-CV-223 (S.D. Tex. Sep. 2, 1994). Because he has more than three strikes, Velez may not hereafter 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).

IFP DENIED; APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR IMPOSED.