

April 6, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-11158  
Summary Calendar

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CONCHITA WASHINGTON,

Plaintiff-Appellant,

versus

LUCY MALLISHAM, Warden, Federal Medical Center-Carswell;  
HARLEY LAPPIN, Director, Federal Bureau of Prisons; FEDERAL  
BUREAU OF PRISONS,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
(4:03-CV-1227-A)  
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Before JOLLY, WIENER, and PICKERING, Circuit Judges.

PER CURIAM:\*

Plaintiff-Appellant Conchita Washington, federal prisoner # 14826-039, appeals from the district court's dismissal of her civil-rights lawsuit, filed pursuant to 42 U.S.C. § 1983, for failure to state a claim on which relief may be granted and as frivolous. Washington argues that Program Statement 1351.05, issued by the Federal Bureau of Prisons, violates the Federal Register Act, the Administrative Procedures Act, the Equal Access

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to Justice Act, the Freedom of Information Act, and the Due Process Clause. As her arguments fail to raise a cognizable issue under 42 U.S.C. § 1983, the dismissal of her instant complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted was proper. See Black v. Warren, 134 F.3d 732, 733-34 (5th Cir. 1998).

Accordingly, the district court's judgment is AFFIRMED. The district court's dismissal for failure to state a claim counts as one strike for purposes of 28 U.S.C. § 1915(g), and our affirmance of that dismissal as frivolous counts as a second strike. See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Washington is warned that if she accumulates three strikes, she may not proceed in forma pauperis in any civil action or appeal filed while she is incarcerated or detained in any facility unless she is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

AFFIRMED; STRIKE WARNING ISSUED.