

October 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20420
Conference Calendar

BRUCE LEE WILLIS,

Plaintiff-Appellant,

versus

BATES, Officer; RICHARD, Officer; TOLLIVER, Officer;
GRIFFIN, Officer; MOSLEY, Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-03-CV-134

Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:*

Bruce Lee Willis, Texas prisoner # 717354, appeals the district court's dismissal of his 42 U.S.C. § 1983 civil rights action as malicious under 28 U.S.C. § 1915(e)(2)(B)(i). Willis argues that this lawsuit is not duplicative because his previous lawsuit, Willis v. Bates, No. 02-20532 (5th Cir. Oct. 29, 2002) (unpublished), was not pending when he filed this lawsuit.

The prior lawsuit need not be pending for the second lawsuit to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

be duplicative and thus malicious. A district court may dismiss a lawsuit as malicious if it arises from the same series of events and alleges many of the same facts as an earlier suit. Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988). A review of the allegations made by Willis in his previous lawsuit against Bates shows that they are sufficiently similar to the allegations made in this case. The district court did not abuse its discretion in dismissing Willis's complaint as malicious. Bailey, 846 F.2d at 1021.

Willis'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.

We remind Willis that he has accumulated three strikes, and that 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 AS FRIVOLOUS.