

February 23, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-11172  
Conference Calendar

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NATIVIDAD SILVA, JR.,

Plaintiff-Appellant,

versus

BUREAU OF PRISONS; K. J. WENDT; RUSS PRUDUE; MARCELLA PRIEST  
ANDERSON; SHANNON PHILPS, Unit Manager, Case Manager, Unit  
5; ROBERT PAIT, Case Manager, Unit 5; ALEX GUZMAN, Counselor  
Unit 5; FEDERAL CORRECTIONAL INSTITUTION SEAGOVILLE,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:04-CV-452-N  
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Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Natividad Silva, Jr., appeals from the district court's dismissal with prejudice of his lawsuit for failure to state a claim upon which relief may be granted, pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Silva has filed a motion to proceed in forma pauperis (IFP) on appeal, challenging the district court's certification that his appeal was not taken in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

good faith pursuant to Baugh v. Taylor, 117 F.3d 197, 199-202 (5th Cir. 1997).

Silva alleged in his complaint that the defendants breached a contract with him and coerced him into renewing the contract. Examination of his arguments reveals that he has failed to allege a claim upon which relief may be granted in this action. The district court's certification that Silva's appeal is not taken in good faith is upheld, Silva's motion for IFP is denied, and this appeal is dismissed as frivolous. See Baugh, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

Silva is hereby informed that the dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g), in addition to the strike for the district court's dismissal. See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). We caution Silva that once he accumulates three strikes, he may not proceed IFP 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 MOTION DENIED; APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING ISSUED.