

February 23, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-20722  
Conference Calendar

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JOHNNY VALCHAR,

Plaintiff-Appellant,

versus

BOARD OF PARDONS & PAROLES,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:03-CV-1897  
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Before BARKSDALE, GARZA, and STEWART, Circuit Judges.

PER CURIAM:\*

Johnny Valchar, Texas prisoner # 744014, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint. Valchar contends that the file maintained by the Texas Board of Pardons and Paroles ("the Board") contains erroneous information regarding his gang affiliation. The district court dismissed this claim as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

Valchar has not shown that the district court abused its discretion in dismissing as frivolous his claim concerning the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

presence of false information in his parole file. See Norton v. Dimazana, 122 F.3d 286, 291 (5th Cir. 1997); Johnson v. Rodriguez, 110 F.3d 299, 308 (5th Cir. 1997).

This court will not consider Valchar's argument that the Board failed to comply with provisions of the Texas Open Records Act requiring that information be divulged to an inmate or his attorney because Valchar did not raise this claim in the district court. See Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999).

Valchar does not address the dismissal of the remaining claims raised in the district court. Accordingly, these claims have been abandoned. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

Valchar's appeal is without arguable merit and is therefore 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.

The dismissal of Valchar's appeal by this court counts as a strike under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Valchar has accumulated at least two additional strikes based on the dismissal of a previous civil rights complaint and appeal as frivolous. See Valchar v. Swart, No. 99-10186 (5th Cir. Aug. 24, 1999) (unpublished). Valchar has now accumulated at least three strikes for purposes of 28 U.S.C. § 1915(g). Accordingly, Valchar is now BARRED 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. See 28 U.S.C. § 1915(g).

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