

**FILED**

August 18, 2004

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 04-40594  
Conference Calendar

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JOHN WEBB,

Plaintiff-Appellant,

versus

LARRY SETTLES; VERNETTE PORTER,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:04-CV-21-JKG  
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Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:\*

John Webb, Texas prisoner # 415339, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous. He argues that the allegations contained in his complaint and the evidence adduced at the Spears\*\* hearing were sufficient to establish a claim against Larry Settles for deliberate indifference to medical needs. Webb does not challenge the dismissal of his claims against Vernetta Porter and has thus

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

\*\* Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

abandoned any challenge related to the dismissal of those claims. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

Webb contends that Settles was not aggressive enough in treating his ankle injury. His disagreement with Settles's treatment of his injury is insufficient to state a constitutional claim. See Norton v. Dimazana, 122 F.3d 286, 292 (5th Cir. 1997).

Webb's appeal is without arguable merit and is therefore DISMISSED as frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The district court's dismissal of his complaint as frivolous and the dismissal of this appeal each count as a "strike" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). If Webb accumulates three "strikes" under 28 U.S.C. § 1915(g), he will not be able to 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; SANCTIONS WARNING ISSUED.