

December 17, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-50212  
Conference Calendar

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MICHAEL WAYNE HARRIS,

Plaintiff-Appellant,

versus

JANIE COCKRELL, Etc.; ET AL.,

Defendants,

JOHNNIE SMITH, also known as W. Smith, Dr.; MONTE SMITH, also known as FNU Smith, RN; HOWARD BENNETT, also known as FNU Bennett, Physician's Assistant, also known as Howard Bennett; BILL WILLIAMS, JR., also known as FNU Williams, RN,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-02-CV-46  
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Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:\*

Michael Wayne Harris, Texas prisoner # 782758, has applied for leave to proceed in forma pauperis ("IFP") in this appeal from the magistrate judge's order denying his motion for appointment of counsel. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). A trial court is not required to appoint

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

counsel for an indigent plaintiff asserting a 42 U.S.C. § 1983 claim except in exceptional circumstances. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). Harris's arguments do not demonstrate that this case is in any way "exceptional." See id. The motion for leave to proceed IFP is DENIED.

Harris's appeal is DISMISSED AS FRIVOLOUS. See 5TH CIR. R. 42.2. We caution Harris that the dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). If Harris accumulates three strikes under 28 U.S.C. § 1915(g), he will not be permitted to 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).

Harris's motion to stay the district court proceedings pending the resolution of the appeal is DENIED AS MOOT.

IFP DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED;  
MOTION TO STAY DISTRICT COURT PROCEEDINGS DENIED AS MOOT.