

FILED

August 18, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-50327
Conference Calendar

STEPHEN E. NICHOLSON,

Plaintiff-Appellant,

versus

LARRY LYNCH, Sheriff; JOHNNY MYNAR; JIMMY STONE;
ED HARRINGTON; UNNAMED PARA-LEGAL SERVICE,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:03-CV-120

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Stephen E. Nicholson, Texas prisoner # 1126089, seeks leave to proceed in forma pauperis (IFP) in this appeal from the district court's dismissal of his 42 U.S.C. § 1983 action for failure to state a claim on which relief could be granted. The district court denied Nicholson's motion for leave to proceed IFP on appeal and certified that the appeal was not taken in good faith. Nicholson challenges the district court's certification decision pursuant to Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

1997). Nicholson has not addressed the merits of the district court's certification decision. Accordingly, his request for IFP status is DENIED, and his appeal is DISMISSED as frivolous. See Baugh, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

The district court's dismissal of his complaint and this court's dismissal of his appeal count as two strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Nicholson has had at least one other civil rights complaint dismissed for failure to state a claim, and we dismissed as frivolous his appeal of that dismissal. Nicholson v. McLennan County Comm'rs Court, No. 04-50356, slip op. (5th Cir. August 17, 2004) (unpublished). Nicholson has accumulated four strikes for purposes of 28 U.S.C. § 1915(g). Adepegba, 103 F.3d at 387. Nicholson is therefore BARRED from proceeding 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).

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