

December 12, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10497
Conference Calendar

RICKY A. PATTON,

Plaintiff-Appellant,

versus

MR. LIVINGSTON; FRANKLIN, Warden of the Middleton Unit;
MR. CRAIG, Chairman of Unit Classification,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:06-CV-37

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Ricky A. Patton, Texas prisoner # 1312441, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint for failure to state a claim. Patton contends that prison officials are violating his constitutional rights by denying him eligibility for release on mandatory supervision. He does not contend that the district court erred by holding that he must first pursue relief by way of habeas corpus. Patton therefore has failed to brief the dispositive issue for appeal. See

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

Patton's appeal is dismissed as frivolous. See 5TH CIR. R. 42.2. The district court's dismissal of Patton's action and this court's dismissal of his appeal each count as a strike against Patton for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). If he accumulates three strikes, he may no longer 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 § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.