

April 23, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-20537
Summary Calendar

BASO E. HARPER, Jr.

Plaintiff-Appellant,

versus

DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION; WILLIAM T. FISHER; KRISTIN W.
KNUTSON; GEORGE C. WEBSTER, Captain; WAYNE A. BOWMAN, Counsel
Substitute
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CV-2279

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Baso E. Harper, Jr., Texas prisoner # 1079380, has appealed the district court's order dismissing his civil rights complaint as frivolous and for failure to state a claim. Harper alleged in his complaint that he suffered injuries when a prison guard pushed him in the chest following an altercation and that prison officials delayed obtaining him medical treatment for one hour and a half, thereby demonstrating deliberate indifference to his medical needs.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Harper's appeal is without arguable merit and is frivolous. See Howard v. Kino, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous it is DISMISSED. See 5TH Cir. 42.2.

Harper has previously accumulated one strike for 28 U.S.C. § 1915(g) purposes. See Harper v. Bell County Texas, No. W-02-CA-161 (S.D. Tex. 6/17/2003). The district court's dismissal of Harper's complaint and this court's dismissal of this appeal both count as additional strikes. See Adepegba v. Hammons, 103 F.3d 283, 387-88 (5th Cir. 1996). Harper may no longer proceed IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. § 1915(g).

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