

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-11303
Conference Calendar

ARNELL TOLIVER,

Plaintiff-Appellant,

versus

HERMAN SHAFFER; HUBE JEAN-LOUIS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:97-CV-260-C

August 24, 1999

Before KING, Chief Judge, and DAVIS and SMITH, Circuit Judges.

PER CURIAM:*

Arnell Toliver, Texas prisoner # 644452, appeals the district court's grant of summary judgment for the defendants in this 42 U.S.C. § 1983 action. His motion to file a reply brief out of time is DENIED. Toliver has not adequately briefed any argument relating to the district court's grant of summary judgment. See Grant v. Cuellar, 59 F.3d 523, 524 (5th Cir. 1995); Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Toliver's appeal is without arguable merit and is frivolous. Accordingly, the appeal is DISMISSED. 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a "strike" for purposes of 28 U.S.C. § 1915(g). We caution Toliver that once he accumulates three strikes, he may not proceed in forma pauperis (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).

MOTION DENIED; APPEAL DISMISSED; WARNING ISSUED.