

April 11, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10237
Conference Calendar

ELIBERTO G. REYNA

Plaintiff-Appellant,

versus

GARY JOHNSON; DOUG DRETKE, DIRECTOR OF CLASSIFICATION; BILL
CHEATHAM, Classification; KENNETH LEE, Classification;
DANNY HORTON, Warden; JAMES MOONEYHAM, Assistant
Warden; DEBORAH FORD; TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, BOARD OF DIRECTORS;
MARY A. JOHNSON, Mail Room Clerk,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:04-CV-202

Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Eliberto G. Reyna, Texas prisoner # 322163, along with 10
fellow prisoners housed at the James V. Allred Unit of the Texas
Department of Criminal Justice, proceeding pro se, filed the
instant 42 U.S.C. § 1983 action against various prison officials,
complaining about the conditions of confinement. They attempted
to bring the case as a class action pursuant to FED. R. CIV. P.

* 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this opinion should not be published and is not precedent except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.

23. The district court, inter alia, denied class certification. Reyna now appeals, arguing that the requirements for class certification have been met.

The class certification decision is not properly before us because the district court's order, which is interlocutory in nature, does not satisfy 28 U.S.C. § 1292(b). See Chevron USA, Inc. v. School Bd. Vermillion Parish, 294 F.3d 716, 720 (5th Cir. 2002). Moreover, this court previously denied Reyna's application to this court for permission to appeal the certification decision pursuant to FED. R. CIV. P. 23(f). See Reyna v. Johnson, No. 05-00007 (5th Cir. June 16, 2005) (unpublished).

The appeal is without arguable merit and is DISMISSED AS FRIVOLOUS. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2. Reyna is CAUTIONED that the dismissal of this appeal as frivolous counts as a strike under 28 U.S.C. § 1915(g) and that if he accumulates three strikes, he will not be able to 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 Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996).

Reyna's motions (1) for a writ of prohibition or restraining order; and (2) to stay the district court proceedings are DENIED.