

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10624
Conference Calendar

RAFAEL ALVARO PRIETO,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA; GEORGE W. BUSH, JR.,
PRESIDENT OF THE UNITED STATES; STATE OF TEXAS;
RICK PERRY, Governor; JANIE COCKRELL, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE; INSTITUTIONAL
DIVISION; CITY OF HURST, Texas Police Department; J. MEEKS,
Officer, Hurst Police Department; NFN YOUNG, Officer,
Hurst Police Department; NFN REED, Officer, Hurst Police
Department UNKNOWN OFFICERS, Hurst Police Department,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:04-CV-101-A

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Rafael Alvaro Prieto, Texas state prisoner # 843320, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous. Prieto argues that he is entitled to damages

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

because he was illegally convicted of sexually molesting two teen-aged boys.

Prieto is challenging the validity of his conviction, and he has not demonstrated that his conviction has been reversed, questioned, or declared invalid. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). The district court did not abuse its discretion in dismissing Prieto's complaint as frivolous. See Martin v. Scott, 156 F.3d 578, 580 (5th Cir. 1998); 28 U.S.C. § 1915A(b)(1).

Prieto's appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2. Prieto is warned that the district court's dismissal of his complaint as frivolous constitutes a "strike" and that the dismissal of this appeal as frivolous also counts as a "strike" under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Prieto is cautioned that if he accumulates three "strikes" under 28 U.S.C. § 1915(g), 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 28 U.S.C. § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.