

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

October 24, 2007

\_\_\_\_\_  
No. 06-41109  
Conference Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

TOMMY EARL HARRELL

Plaintiff-Appellant

v.

D MOONEYHAM; N WEBB; KELLI WARD

Defendants-Appellees

\_\_\_\_\_  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:06-CV-211  
\_\_\_\_\_

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Tommy Earl Harrell, Texas prisoner # 1017089, appeals from the district court's dismissal with prejudice of his 42 U.S.C. § 1983 lawsuit as frivolous and for failure to state a claim upon which relief may be granted. Harrell argues that the district court erred in determining that he did not allege the deprivation of a protected liberty interest. The district court properly held that Harrell's lawsuit was barred because he had not shown that his disciplinary conviction

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

had been expunged or reversed. See *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Clarke v. Stalder*, 154 F.3d 186, 189-91 (5th Cir. 1998) (en banc).

Harrell's appeal lacks arguable merit and therefore is dismissed as frivolous. See 5TH CIR. R. 42.2; *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). The district court's dismissal of the § 1983 lawsuit and our dismissal of this appeal count as two strikes for purposes of 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). Harrell is cautioned that if he accumulates three strikes under § 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 § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.