

June 29, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-11158
Summary Calendar

CONCHITA WASHINGTON,

Plaintiff-Appellant,

versus

LUCY MALLISHAM, Warden, Federal Medical Center-Carswell;
HARLEY LAPPIN, Director, Federal Bureau of Prisons;
FEDERAL BUREAU OF PRISONS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:03-CV-1227-A

ON PETITION FOR REHEARING

Before JOLLY, WIENER, and PICKERING, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the motion filed on May 24, 2004, is construed as a petition for panel rehearing and that petition is GRANTED. We STRIKE the last paragraph in our previous opinion and replace it with the following:

Accordingly, the district court's judgment is AFFIRMED. The district court's dismissal for failure to state a claim counts as one strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Washington is warned that if she accumulates three strikes, she may not proceed in forma pauperis in any

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civil action or appeal filed while she is incarcerated or detained in any facility unless she is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

Any other relief sought in Washington's petition for panel rehearing is DENIED.