

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10625
Conference Calendar

FELIX AARON MILLER,

Plaintiff-Appellant,

versus

MARTIN R. LOYD,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:00-CV-151

October 17, 2000

Before SMITH, and BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Felix Miller, Texas prisoner # 555749, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as malicious under 28 U.S.C. § 1915(e)(B)(i). The allegations of Miller's current § 1983 action duplicate allegations asserted in a prior § 1983 action, filed by Miller which was dismissed as frivolous by the district court in March 2000. See Miller v. Lloyd, No. 2:99-CV-390 (N.D. Tex. March 15, 2000) (dismissed as frivolous). The district court's dismissal of Miller's current § 1983

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

complaint as malicious was thus proper. See Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993).

Miller's appeal lacks arguable merit and is therefore DISMISSED AS FRIVOLOUS. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2. Miller has more than three strikes against him under 28 U.S.C. § 1915(g),** and he cannot proceed in forma pauperis in the district court or on appeal except in cases in which he is under imminent danger of serious physical injury. See § 1915(g); Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996).

DISMISSED AS FRIVOLOUS; § 1915(g) BAR IMPOSED.

** See Miller v. Lloyd, No. 2:99-CV-390 (N.D. Tex. March 15, 2000) (dismissed as frivolous); Miller v. Clendennen, No. 4:00-CV-076 (E.D. Tex. April 28, 2000) (district court adopted the magistrate judge's recommendation to dismiss the complaint as frivolous); Miller v. Johnson, No. 2:00-CV-0045 (N.D. Tex. May 19, 2000) (§ 1983 suit dismissed as barred by the exhaustion requirement and for failure to state a claim upon which relief may be granted); Miller v. Spears, No. 7:00-CV-113, p. 2, n.2 (N.D. Tex. June 30, 2000) (dismissed as frivolous).