

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-11248
Conference Calendar

WINDELL EUGENE HENRY,

Plaintiff-Appellant,

versus

MARK A. VERNON, Officer, City of Dallas,
Badge #6528; NFN JOHNSON, Officer, City
of Dallas, Badge #6304; LORI MONI SCHOENHOLZ,
Officer, City of Dallas, Badge #7361; M. L.
HENSON, Affiant in arrest #98-080064, service
#0945563H, City of Dallas,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:00-CV-1132-H

October 26, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Windell Eugene Henry (Henry), Texas prisoner #889135,
appeals the district court's dismissal of his civil rights action
as frivolous under 28 U.S.C. § 1915.

The district court did not indicate whether its dismissal of
Henry's claims as frivolous was with or without prejudice.
Accordingly, we will presume that the dismissal is without

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that this opinion should not be published and is not precedent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

prejudice. Graves v. Hampton, 1 F.3d 315, 319 (5th Cir. 1993), abrogated on other grounds by Arvie v. Broussard, 42 F.3d 249, 250 (5th Cir. 1994). Thus, we need not address Henry's arguments that the district court erred in dismissing his claims with prejudice. We nevertheless note that his appellate arguments are without merit. See Boyd v. Bigger, 31 F.3d 279, 284 (5th Cir. 1994); Lewis v. Beddingfield, 20 F.3d 123, 125 (5th Cir. 1994).

Henry's appeal is without arguable merit and is 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. The dismissal of this appeal and the district court's dismissal of this lawsuit as frivolous constitute two strikes for purposes of the 28 U.S.C. § 1915(g) bar. Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). Henry has previously been issued two strikes by this court. See Henry v. Francis, No. 00-10623 (5th Cir. Dec. 13, 2000). As Henry has accumulated three strikes, he may not proceed *in forma pauperis* in any civil action or appeal brought in a United States court while he is incarcerated unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

DISMISSED AS FRIVOLOUS; SANCTION ISSUED.