

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20837
Conference Calendar

THEODORE WILLIAM PALMER,

Plaintiff-Appellant,

versus

JANIE COCKRELL, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CV-2264

April 11, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

Theodore William Palmer, Texas prisoner # 847820, challenges the district court's 28 U.S.C. § 1915A dismissal as frivolous or for failure to state a claim of his 42 U.S.C. § 1983 civil rights lawsuit, asserting that he has not been properly compensated for work performed while in prison. He argues, for the first time on appeal, that the failure to compensate him violates Texas law.

This court will not review this newly raised argument. See Shanks v. AlliedSignal, Inc., 169 F.3d 988, 993 n.6 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

1999); Burch v. Coca-Cola Co., 119 F.3d 305, 319 (5th Cir. 1997). Inasmuch as Palmer's argument can be construed as a restatement of his general claim that he was entitled to compensation, the claim is frivolous because, as the district court determined, Palmer has no constitutional right to such compensation. See Ali v. Johnson, 259 F.3d 317, 318 (5th Cir. 2001).

Palmer's appeal is without arguable merit, is frivolous, and is therefore DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. The district court's dismissal of Palmer's complaint counts as a strike for purposes of 28 U.S.C. § 1915(g), as does this court's dismissal of the instant appeal. See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Palmer is CAUTIONED that if he accumulates a third strike, he may not proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; THREE-STRIKES WARNING ISSUED.