

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-10739
Conference Calendar

JESSE HAMPTON,

Plaintiff-Appellee,

versus

GARY JOHNSON; TIMOTHY REVELL, Dr.;
NFN TINSLEY; JOHN BAINS; MR. WILLIAMS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:99-CV-407

December 11, 2002

Before JOLLY, DAVIS, and JONES, Circuit Judges.

PER CURIAM:*

Jesse Hampton ("Hampton"), Texas state prisoner #417856, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous and for failure to state a claim upon which relief could be granted. See 28 U.S.C. § 1915(e)(2). Hampton argues that the defendants were deliberately indifferent to his medical needs because defendant Dr. Timothy Revell removed

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

his medical work restrictions without additional consultation or further medical examination.

Because Hampton has not shown that the defendants were deliberately indifferent to his needs or that they actually knew that he faced a substantial risk of serious harm due to his working requirements, he has not established that the district court erred in dismissing his complaint. See Farmer v. Brennan, 511 U.S. 825, 847 (1994); Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989).

Hampton's appeal is without arguable merit and is dismissed as frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The dismissal of the appeal as frivolous and the district court's dismissal of Hampton's 42 U.S.C. § 1983 complaint as frivolous and for failure to state a claim each count as a "strike" under the three-strikes provision of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Hampton is CAUTIONED that if he accumulates three "strikes" under 28 U.S.C. § 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 28 U.S.C. § 1915(g).

APPEAL DISMISSED; THREE-STRIKES WARNING ISSUED.