

April 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-11040
Conference Calendar

MICHAEL DENNIS HOLGUIN,

Plaintiff-Appellant,

versus

WAYNE SALVANT, Judge; LESLIE JOHNS, Lawyer,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:02-CV-609-A

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Michael Holguin, Texas prisoner #0328959, appeals the district court's dismissal of his 42 U.S.C. § 1983 case under 28 U.S.C. § 1915A. Holguin argues, as he did in the district court, that a state trial judge illegally imposed a sentence of probation against Holguin and that his attorney allowed such to occur. Holguin seeks monetary damages and release from custody.

The district court was correct to dismiss Holguin's claims under judicial immunity. See Krueger v. Reimer, 66 F.3d 75, 76-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

77 (5th Cir. 1995). Also, Holguin's claims are barred by Heck v. Humphrey, 512 U.S. 477, 486 (1994). To the extent his civil rights claims are construed as habeas claims, the district court was correct for dismissing them for failure to exhaust state remedies. See Nobles v. Johnson, 127 F.3d 409, 419-20 (5th Cir. 1997).

Holguin's appeal lacks arguable merit and is therefore dismissed as frivolous, which counts as one strike under 28 U.S.C. § 1915(g). See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). Holguin is warned that if he accumulates three strikes, 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 under imminent danger of serious physical injury. 28 U.S.C. § 1915(g). He should review any pending appeals or district court actions to ensure that they are not frivolous.

APPEAL DISMISSED; 28 U.S.C. § 1915(g) WARNING ISSUED.