

July 9, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 02-51237
Summary Calendar

ALBERT ZUNIGA,

Plaintiff-Appellant,

versus

UNIVERSITY HEALTH SYSTEM; ROBERT C. SCHENCK, JR., DR.;
JOHN C. SPARKS, DR.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-02-CV-619

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Albert Zuniga, prisoner # 528311 in the Bexar County Adult Detention Center, has filed an application for leave to proceed in forma pauperis (IFP) on appeal, following the district court's denial of his motion for a preliminary injunction. By moving for IFP, Zuniga is challenging the district court's certification that IFP status should not be granted on appeal because his appeal is not taken in good faith. Baugh v. Taylor, 117 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

197, 202 (5th Cir. 1997). The district court noted the Zuniga had submitted no medical opinion showing that he would suffer irreparable harm if he were not given orthopedic shoes. Zuniga's conclusional allegation of irreparable harm is insufficient to show that the district court abused its discretion in denying injunctive relief. Lakedreams v. Taylor, 932 F.2d 1103, 1107 (5th Cir. 1991).

Zuniga's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The district court did not err by certifying that the appeal is not taken in good faith. Zuniga's motion for leave to proceed IFP is DENIED. Zuniga's motion for appointment of counsel is DENIED. Zuniga's appeal is DISMISSED. Baugh, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

This dismissal of Zuniga's appeal counts as a strike for purposes of 28 U.S.C. § 1915(g). Zuniga is warned that should he accumulate three strikes, for purposes of 28 U.S.C. § 1915(g), he will be unable to proceed IFP in any civil action or appeal unless he is under imminent danger of serious physical injury.

IFP DENIED; APPOINTMENT OF COUNSEL DENIED; APPEAL DISMISSED; SANCTIONS WARNING ISSUED.