

August 16, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20706
Conference Calendar

DUANE B. HARRIS,

Plaintiff-Appellant,

versus

RICHARD C. THALER, Senior Warden; STEVEN R. RICH, Assistant
Warden; ABBAS KHOSHDEL; LOWRY POWERS, Physician's Assistant;
MS. D.A. RUBY, Nurse Practitioner,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:03-CV-2039

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Duane B. Harris, Texas prisoner no. 934689, appeals the
dismissal of his 42 U.S.C. § 1983 action as frivolous under 28
U.S.C. § 1915(e)(2)(B). Harris contends that the defendants
failed to provide him with adequate medical care.

Harris's complaint, his more definite statement in the
district court, and the transcript of his hearing held pursuant
to Spears v. McCotter, 766 F.2d 179, 180-81 (5th Cir. 1985),

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this opinion should not be published and is not precedent except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

reveal that he has failed to allege facts to establish deliberate indifference to a serious medical need as is required in order to proceed under the Eighth Amendment and 42 U.S.C. § 1983. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). The judgment of the district court is AFFIRMED.

Harris is warned that the district court's dismissal of his action as frivolous counts as a strike under 28 U.S.C. § 1915(g). If Harris accumulates three strikes, 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 Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996); 28 U.S.C. § 1915(g).

AFFIRMED; SANCTION WARNING ISSUED.