

June 21, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41140
Conference Calendar

JOHN C. SPURLOCK,

Plaintiff-Appellant,

versus

JANIE COCKRELL; AMADO IGLESIAS; BRENDA CHANEY;
CRYSTAL IRVIN; UNKNOWN PICKET OFFICER,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 6:02-CV-61

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

John C. Spurlock, Texas prisoner # 741571, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint and moves this court for appointment of counsel. The district court determined that Spurlock's claims against several of the defendants were duplicative of claims that had been raised in a prior § 1983 complaint that was dismissed as frivolous. Spurlock v. Scott, No. V-00-0067 (S.D. Tex. Sept. 27, 2002). The district

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

court granted the remaining defendants' motion for summary judgment.

We conclude that Spurlock's claims against all of the defendants are duplicative of his claims in the earlier lawsuit that was dismissed by the district court as frivolous. As his instant claims are duplicative, the district court properly dismissed them as malicious pursuant to 28 U.S.C.

§ 1915(e)(2)(B)(i). See Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993); Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988); see also Sojourner T v. Edwards, 974 F.2d 27, 30 (5th Cir. 1992) (court may affirm on any grounds supported by the record).

As Spurlock's appeal is without arguable merit, it is dismissed as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. His motion for appointment of counsel on appeal is denied.

The dismissal of the instant appeal as frivolous counts as a strike under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Spurlock previously received two strikes when his prior § 1983 complaint was dismissed as frivolous in Spurlock v. Scott, No. V-00-0067 (S.D. Tex. Sept. 27, 2002), and this court dismissed his appeal as frivolous in Spurlock v. Scott, 90 F. App'x 743, 744 (5th Cir. 2004). Because Spurlock now has accumulated at least three strikes under § 1915(g), he is barred from proceeding 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).

APPEAL DISMISSED AS FRIVOLOUS; MOTION FOR APPOINTMENT OF COUNSEL DENIED; 28 U.S.C. § 1915(g) BAR IMPOSED.