

April 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41297
Conference Calendar

JAMES EARL BREWSTER,

Plaintiff-Appellant,

versus

UPENDRA KATRAGADDA; ET AL.,

Defendants,

UPENDRA KATRAGADDA; DEBRA GREEN;
ARUSHA JONES; C. STEPNER; JANIE COCKRELL,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:02-CV-420

Before JONES, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

James Earl Brewster, Texas prisoner # 664663, proceeding pro se and in forma pauperis (IFP), appeals the district court's dismissal of his 42 U.S.C. § 1983 civil rights action against Texas Department of Criminal Justice-Institutional Division officials. He argues that the defendants failed to protect him from being attacked by a fellow inmate. Brewster has not shown

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that the officials ignored his request to be moved, nor has he shown that the officials perceived the alleged threat as posing a substantial risk of serious harm. Accordingly, Brewster has failed to show that the defendants acted with deliberate indifference. See Farmer v. Brennan, 511 U.S. 825, 837 (1994); Velasquez v. Woods, 329 F.3d 420, 421 (5th Cir. 2003).

Brewster's appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, we DISMISS his appeal as frivolous. 5TH CIR. R. 42.2. The dismissal by the district court and the dismissal of this appeal as frivolous both count as strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Brewster is WARNED that if he accumulates three strikes under 28 U.S.C. § 1915(g), he will not be able to proceed IFP 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; SANCTION WARNING ISSUED.