

November 10, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-10234  
Summary Calendar

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NELSON A. ROMERO,

Plaintiff-Appellant,

versus

TERRY BROWN; TOMMY JACOB; JOHNNY GARCIA,  
Sheriff, Dawson County Sheriff's Department,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:02-CV-98  
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Before REAVLEY, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Nelson A. Romero, now Texas prisoner # 1127658, appeals the dismissal as frivolous, pursuant to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(b), of his 42 U.S.C. § 1983 civil rights lawsuit, asserting deliberate indifference to his medical needs. This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). A timely notice of appeal is a prerequisite for the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

exercise of jurisdiction by this court. United States v. Carr, 979 F.2d 51, 55 (5th Cir. 1992).

Romero's notice of appeal, filed almost one year after the district court's judgment, is untimely. See FED. R. APP. P. 4(a)(1)(A). Consequently, this court lacks jurisdiction over the instant appeal, and the appeal is DISMISSED.

The district court's dismissal of Romero's complaint counts as a strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Romero is CAUTIONED that if he accumulates three strikes, he will no longer be allowed to proceed in forma pauperis in any civil action or appeal filed while he is detained or incarcerated in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

DISMISSED; THREE-STRIKES WARNING ISSUED.