

**FILED**

April 28, 2006

Charles R. Fulbruge III  
Clerk

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 05-50456  
Summary Calendar

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JOSE ANTHONY VILLAREAL,

Plaintiff-Appellant,

versus

JOSEPH CASAL; TERESA MCCOMB; ROXIE HERNANDEZ,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
(4:02-CV-138)

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Before BARKSDALE, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Jose Anthony Villareal, Texas prisoner number 913759, filed the instant 42 U.S.C. § 1983 suit to seek redress for the defendants' alleged failure to protect him from being assaulted by another inmate. The district court dismissed his suit and certified that his appeal was not taken in good faith. Villareal challenges the district court's certification decision pursuant to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

**Baugh v. Taylor**, 117 F.3d 197, 202 (5th Cir. 1997), and he requests that this court grant him authorization to proceed IFP on appeal.

Villareal maintains that the defendants knew or should have known of his attacker's violent tendencies and that they violated his constitutional rights by failing to protect him from the other inmate. The record evidence refutes these contentions and supports the district court's dismissal of Villareal's suit. See **Resident Council v. United States Dep't of Hous. and Urban Dev.**, 980 F.2d 1043, 1050 (5th Cir. 1993).

Villareal has failed to show that his appeal involves "legal points arguable on their merits (and therefore not frivolous)". **Howard v. King**, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted). Accordingly, his motion for authorization to proceed IFP on appeal is denied, and his appeal is dismissed as frivolous. See **Baugh**, 117 F.3d at 202 & n.24.

The dismissal of Villareal's appeal as frivolous by this court counts as a strike under 28 U.S.C. § 1915(g). See **Adepegba v. Hammons**, 103 F.3d 383, 387-88 (5th Cir. 1996). Villareal is cautioned that once he accumulates three strikes, he may not 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).

**MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED**