

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-30557
Conference Calendar

TYRONE BANKS,

Plaintiff-Appellant,

versus

UNKNOWN MORRIS; UNKNOWN GRIMES; UNKNOWN HILL;
C. M. LENSING,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:03-CV-1056-C

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Tyrone Banks, Louisiana inmate # 109878, has filed a motion in this court to proceed in forma pauperis (IFP) in the appeal of the dismissal of his civil rights complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) and 42 U.S.C. § 1997e for failure to state a claim. Banks's claim that he was served food loaf for seven days does not implicate a liberty interest; he has not shown that he will raise a nonfrivolous issue on appeal or that the district court erred in certifying that his appeal was not taken in good

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

faith. See Sandin v. Conner, 515 U.S. 472, 484 (1995); Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, Banks's motion for leave to proceed IFP is DENIED, and his appeal is DISMISSED as frivolous. Baugh v. Taylor, 117 F.3d 197, 202 n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.

The dismissal of this appeal and the district court's dismissal of Banks's complaint count as strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Banks previously earned a strike in another civil rights action. See Banks v. Cain, No. 03-310-D-M1 (M.D. La. Aug. 12, 2003); Adepegba, 103 F.3d at 387-88. Because Banks has accumulated three strikes under 28 U.S.C. § 1915(g), he is BARRED from proceeding 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).

IFP DENIED; APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR IMPOSED.