

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10686
Conference Calendar

TONY RAY MITCHELL,

Plaintiff-Appellant,

versus

GERALD GARRETT; CRAIG HINES; NICKI WEAVER,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:00-CV-235-A

December 13, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:*

Tony Ray Mitchell, Texas prisoner # 488816, appeals the district court's dismissal of his 42 U.S.C. § 1983 action as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). Mitchell argues that the district court erred in dismissing his 42 U.S.C. § 1983 action as barred by the doctrine of res judicata. Because the instant action involves the identical parties and the same cause of action as Mitchell's prior civil action in Case No. 4:00-CV-040-Y, and because a final judgment was rendered by a court of competent jurisdiction in the prior action, the district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

did not err in holding that the instant action is barred by the doctrine of res judicata. See Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc., 37 F.3d 193, 195 (5th Cir. 1994).

Mitchell's appeal is without arguable merit, and is thus, frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, Mitchell's appeal is DISMISSED. See 5TH CIR. R. 42.2. Mitchell is advised that the district court's dismissal of this action and this court's dismissal of this appeal both count as "strikes" for the purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). Mitchell is also advised that if he accumulates three strikes, he will be barred from bringing a civil action or an appeal *in forma pauperis* unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g). Mitchell is advised to review any pending pleadings or appeals to ensure that they do not raise any frivolous claims.

APPEAL DISMISSED; SANCTION WARNING ISSUED.