

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10856
Conference Calendar

MICHAEL L. HOWARD,

Plaintiff-Appellant,

versus

JOHN CORNYN, Attorney General
of Texas, Child Support Division,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:00-CV-1289-D

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Texas state prisoner Michael L. Howard, #918423, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous. He has also filed motions for discovery, to supplement the record, to order a blood test, and to waive his filing fee. These motions are DENIED.

Howard's failure to identify any error in the district court's legal analysis or its application to his lawsuit "is the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

same as if he had not appealed that judgment." Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Howard's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2.

The district court's dismissal of the present case and this court's dismissal of Howard's appeal count as two strikes against him for purposes of 28 U.S.C. § 1915(g). Howard has already accumulated one strike. See Howard v. Thomas, No. 95-50498 (5th Cir. Jan. 12, 1996)(unpublished). Because he is subject to the three-strikes bar under the statute, Howard is BARRED from proceeding in forma pauperis 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; MOTIONS DENIED; SANCTION IMPOSED.