

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40397
Conference Calendar

EDGAR LEE DEARS,

Plaintiff-Appellant,

versus

UNIDENTIFIED BUTLER, Ms., Employee,
Trusty Camp,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:99-CV-224

December 13, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:*

Edgar Lee Dears, Texas prisoner #454286, appeals from the dismissal of his civil rights complaint as frivolous and for failure to state a claim under 28 U.S.C. § 1915A(b)(1). Dears averred that he was denied access to the courts by the appellee's alleged confiscation of an indictment.

The district court did not err in dismissing Dears' complaint as frivolous and for failure to state a claim. See 28 U.S.C. § 1915A(b)(1); see Berry v. Brady, 192 F.3d 504, 507 (5th

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Cir. 1999); Black v. Warren, 134 F.3d 732, 733-34 (5th Cir. 1998). Dears has not alleged an injury associated with his claim that the appellee impeded his access to the courts. Lewis v. Casey, 518 U.S. 343, 350 (1996).

Dears also questions the fairness of the Spears** hearing held by the magistrate judge. A review of the Spears hearing shows no unfairness. Wesson v. Oglesby, 910 F.2d 278, 281 (5th Cir. 1990)

Dears' 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 dismissal of this appeal as frivolous counts as a "strike" for purposes of 28 U.S.C. § 1915(g), as does the district court's dismissal of Dears' complaint as frivolous. See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Dears therefore has two "strikes" under 28 U.S.C. § 1915(g). Dears is warned that if he accumulates three "strikes" pursuant to 28 U.S.C. § 1915(g), he may not proceed 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 AS FRIVOLOUS; STRIKE WARNING ISSUED.

** Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).