

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-41400  
Conference Calendar

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HERMAN PALMER,

Plaintiff-Appellant,

versus

TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE-INSTITUTIONAL DIVISION  
COMPANY DEPARTMENTS,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:00-CV-244  
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October 25, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Herman Palmer, Texas prisoner number 537392, appeals the district court's dismissal without prejudice of his 42 U.S.C. § 1983 complaint for lack of exhaustion. Despite ample opportunity to do so, Palmer has not shown that the district court erred in dismissing his complaint. See Powe v. Ennis, 177 F.3d 393, 394 (5th Cir. 1999); Wendell v. Asher, 162 F.3d 887, 890-91 (5th Cir. 1998); Cooper v. Brookshire, 70 F.3d 377, 380 (5th Cir. 1995).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Palmer's appeal is without arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Because this appeal lacks merit, it is DISMISSED. See 5th Cir. R. 42.2.

This dismissal of Palmer's appeal as frivolous counts as a "strike" for the purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). We note that Palmer has at least one other "strike" against him. See Palmer v. Jones, No. 00-40371 (5th Cir., Dec. 14, 2000). Palmer is warned that if he accumulates three "strikes" pursuant to 28 U.S.C. § 1915(g), he may not be able to 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 § 1915(g).  
APPEAL DISMISSED; SANCTIONS WARNING ISSUED.