

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-50939
Conference Calendar

HERMAN WHITE,

Plaintiff-Appellant,

versus

CARLOS BOWEN,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. W-99-CV-286

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Herman White, Texas prisoner No. 684880, seeks leave to proceed in forma pauperis (IFP) following a certification pursuant to 28 U.S.C. § 1915(a)(3) that his appeal is taken in bad faith. White's contention that the district court erred by dismissing his complaint under the "three-strikes" provision of 28 U.S.C. § 1915(g) is frivolous because the district court dismissed White's complaint on the merits for failure to state a claim. White has presented no argument challenging the district court's determination that he failed to state a claim upon which

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

relief could be granted. Thus, he has failed to show that his appeal is not frivolous or that the district court erred in determining that the appeal is not taken in good faith. See Lewis v. Lynn, 236 F.3d 766, 768 (2001); Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993) (28 U.S.C. § 2254 case).

Because White has failed to show that his appeal involves "legal points arguable on their merits (and therefore not frivolous)," the motion for IFP is DENIED and the appeal is DISMISSED AS FRIVOLOUS. Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); see Baugh v. Taylor, 117 F.3d 197, 202 and n.24 (5th Cir. 1997).

The district court's dismissal of the complaint for failure to state a claim and this court's dismissal of the appeal as frivolous count as two "strikes" for purposes of § 1915(g). White is cautioned that once he accumulates three strikes, he will not be able to proceed IFP in any civil action or appeal while he is imprisoned "unless [he] is under imminent danger of serious physical injury." § 1915(g).

IFP DENIED. APPEAL DISMISSED. SANCTIONS WARNING ISSUED.
5TH CIR. R. 42.2.