

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10173
Conference Calendar

ERIC RANDALL HINKLE,

Plaintiff-Appellant,

versus

MICHAEL W. COUNTZ; WAYNE SCOTT;
GARY JOHNSON; J.K. PRICE,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:00-CV-179

June 13, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Eric Randall Hinkle, Texas prisoner # 849430, appeals the district court's judgment dismissing his 42 U.S.C. § 1983 action as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Hinkle argues that he cannot be forced to work because labor was not specifically ordered as part of his sentence. He argues that the Thirteenth Amendment invalidates all state laws requiring prisoners to work.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

According to Hinkle's pleadings, his work consisted of kitchen and laundry housekeeping chores, which did not violate the Thirteenth Amendment. Channer v. Hall, 112 F.3d 214, 218-19 (5th Cir. 1997) (recognizing the existence of a judicially-created "housekeeping-chore" exception to the prohibition against involuntary servitude). The district court did not abuse its discretion in dismissing his complaint as frivolous. Siqlar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997).

Hinkle'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. Hinkle is hereby informed that the dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g), in addition to the strike for the district court's dismissal. See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996) ("[D]ismissals as frivolous in the district courts or the court of appeals count [as strikes] for the purposes of [§ 1915(g)]."). We caution Hinkle that once he accumulates three strikes, he may not 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 28 U.S.C. § 1915(g).

APPEAL DISMISSED AS FRIVOLOUS.