

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10179
Conference Calendar

TONY RAY MITCHELL,

Plaintiff-Appellant,

versus

VICTOR RODRIGUEZ,
Director TDCJ Parole Division, in his
individual and official capacities;
GERALD GARRETT, Chairman TBPP, in his
individual and official capacities;
RAVEN KAZEN, Director VSD, in his
individual and official capacities,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:00-CV-222-C
- - - - -

August 23, 2001

Before KING, Chief Judge, and POLITZ and PARKER, Circuit Judges.

PER CURIAM:*

Tony Ray Mitchell, Texas prisoner #488816, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint, with prejudice, under 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim upon which relief may be granted.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

His allegation that the Texas Parole Board relies on an "erroneous and derogatory victim impact statement" in making parole determinations regarding him does not assert a federal constitutional violation. Johnson v. Rodriguez, 110 F.3d 299, 308 (5th Cir. 1997).

Mitchell's appeal is without merit, and therefore frivolous. See Howard v. King, 707 F.2d at 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 Mitchell's appeal count as two strikes against him for purposes of 28 U.S.C. § 1915(g). The instant appeal was pending when this court imposed the "three-strikes" bar against Mitchell in Mitchell v. Bowman, No. 00-10687 (5th Cir. Feb. 14, 2001)(unpublished). He also accumulated an additional four strikes in Mitchell v. Garrett, No. 00-10688 (5th Cir. Apr. 10, 2001)(unpublished) and Mitchell v. Ballard, No. 00-50932 (5th Cir. Apr. 12, 2001)(unpublished). We again remind Mitchell that he remains barred under 28 U.S.C. § 1915(g) from proceeding in forma pauperis in any civil action or appeal while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury.

APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR REMAINS IN EFFECT.