

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-10907  
Conference Calendar

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CHARLES RAY GOSS,

Plaintiff-Appellant,

versus

MONTFORD UNIT; NFN JETER, Lieutenant,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:01-CV-149-C  
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December 12, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Charles Ray Goss (Texas prisoner #923183) appeals the district court's dismissal of his civil rights action under 28 U.S.C. § 1915(e)(2)(B) as frivolous and for failure to state a claim. He argues that his complaint should not have been dismissed because the racial slur and the other statements made to him by Lieutenant Jeter violated his Fourteenth Amendment equal-protection right to be free from racial discrimination. Goss' argument, however, is unavailing. See Williams v. Bramer, 180 F.3d 699, 706 (5th Cir. 1999)(stating that "[w]here the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

conduct at issue consists solely of speech, there is no equal protection violation"); Bender v. Brumley, 1 F.3d 271, 274 n.4 (5th Cir. 1993)(stating that allegations of verbal abuse as well as threatening language and gestures on the part of a correctional officer do not rise to the level of a constitutional violation). Accordingly, the district court did not err in dismissing Goss' complaint. See Bass v. Parkwood Hosp., 180 F.3d 234, 240 (5th Cir. 1999).

Goss' appeal is frivolous and is therefore DISMISSED. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2. The dismissal of Goss' complaint as frivolous and for failure to state a claim and the dismissal of this appeal as frivolous each count as a strike for the purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). We caution Goss that once he accumulates three strikes, 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; 28 U.S.C. § 1915(g) WARNING ISSUED.