

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-11432
Conference Calendar

KIERON DEREK PENIGAR,

Plaintiff-Appellant,

versus

WILLIAM BARDIN, Captain; KIMBERLY SIMMONS;
SUSAN L. SCHUMACHER; MARIO V. SANCHEZ, Sergeant;
BOCEPHOUS MCDANIELS, Correctional Officer III,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:01-CV-195

April 10, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

Kieron Derek Penigar, Texas state prisoner #721657, appeals the dismissal of his 42 U.S.C. § 1983 complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Penigar seeks damages and declaratory relief and argues that he did not receive a fair disciplinary hearing or appeal. As a result of the disciplinary conviction, Penigar was placed on 15 days recreation restriction and 30 days commissary restriction, and he was ordered to pay for the damage to the property.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

A prisoner's liberty interest is "generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 485 (1995). The loss of recreation and commissary privileges do not implicate any due process concerns. See Madison v. Parker, 104 F.3d 765, 767-68 (5th Cir. 1997).

Penigar'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. The dismissal of this appeal counts as a "strike" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). We caution Penigar 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; SANCTIONS WARNING ISSUED.