

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20016
Conference Calendar

ULYSSES JOHNSON,

Plaintiff-Appellant,

versus

GARY L. JOHNSON, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION; JINKS LEE,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CV-3747

April 10, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Ulysses Johnson, Texas prisoner 794106, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint pursuant to 28 U.S.C. § 1915A for failing to state a claim for which relief could be granted. He contends that the district court erred by dismissing his claim without giving him notice of the impending dismissal and allowing him to amend his complaint. After de novo review and considering that 28 U.S.C. § 1915A contains no

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

requirement that a plaintiff be given notice of an impending dismissal, we hold that the district court properly dismissed Johnson's complaint for failure to state a claim.

Because Johnson has failed to raise an issue of arguable merit, the appeal is frivolous and is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2. Our dismissal of this appeal and the district court's dismissal for failure to state a claim count as two "strikes" against Johnson for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). We caution Johnson 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; SANCTION WARNING ISSUED.