

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21277
Conference Calendar

DARRYL GLEN WALLACE,

Plaintiff-Appellant,

versus

MERLYLIN OWENS, Lieutenant;
KEVIN BROWN, Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CV-4505

August 21, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Darryl Glen Wallace, Texas prisoner # 636243, appeals the district court's dismissal of his 42 U.S.C. § 1983 action for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). He argues that district court erred in dismissing his action without giving him an opportunity to prove his allegations by presenting witnesses. Wallace argues that Lieutenant Merlylin Owens and Officer Kevin Brown threatened to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

cause him bodily harm. Because Wallace failed to allege that he suffered from any physical injury, de minimis or otherwise, the district court did not err in dismissing his 42 U.S.C. § 1983 action for failure to state a claim. See 42 U.S.C. § 1997e(e); Siqlar v. Hightower, 112 F.3d 191, 193-94 (5th Cir. 1997); Gomez v. Chandler, 163 F.3d 921, 924 (5th Cir. 1999); see also McFadden v. Lucas, 713 F.2d 143, 146 (5th Cir. 1983)("[M]ere threatening language and gestures of a custodial office[r] do not, even if true, amount to constitutional violations.").

Wallace's appeal is without arguable merit and, therefore, is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2. Wallace is advised that the district court's dismissal of his civil action and the dismissal of this appeal both count as "strikes" under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Wallace is also advised 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.