

April 23, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-11083
Conference Calendar

ADRIAN GUTIERREZ MARTINEZ,

Plaintiff-Appellant,

versus

EULON ROSS-TAYLOR, Doctor, Medical Director; SCHOCK,
Behavioral Assessment Psychologist,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:01-CV-189-BG

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Adrian Gutierrez-Martinez, Texas prisoner # 562996, appeals the dismissal of his Americans With Disabilities Act (ADA) claim for failure to state a claim. He argues that his pre-disciplinary mental status exams violated psychiatric policy and therefore caused him to be disciplined for conduct that was a manifestation of his mental illness and for which he should not have been held accountable.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gutierrez's self-styled ADA claim is in fact a thinly veiled challenge to the validity of his disciplinary convictions. Absent proof that his disciplinary convictions have been overturned or otherwise declared invalid, Gutierrez cannot bring a civil action seeking damages based on a finding of guilt on his disciplinary charges, because success on his civil claim would necessarily imply the invalidity of his disciplinary convictions. Clarke v. Stalder, 154 F.3d 186, 189 (5th Cir. 1998) (en banc). He has therefore failed to state a claim upon which relief could be granted.

Gutierrez's appeal is without arguable merit and is dismissed. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g), in addition to the strike for the district court's dismissal. See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). Gutierrez has also had a second civil rights suit dismissed as frivolous. See Gutierrez Martinez v. Leher, No. 02-10491 (5th Cir. Sept. 17, 2002) (unpublished). He is BARRED from bringing any civil action or appeal in forma pauperis while he is incarcerated or detained in any facility unless he shows that he is under imminent danger of serious physical injury.

APPEAL DISMISSED; THREE-STRIKES BAR IMPOSED.