

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20388
Summary Calendar

JERRY LEONARD FAIRRIS,

Plaintiff-Appellant,

versus

S. SMITH, Assistant Warden; J. MORGAN;
H. H. HARRIS, Captain; S. ALLEN, Lieutenant,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CV-260

November 7, 2002

Before JONES, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:*

Jerry Leonard Fairris, Texas prisoner # 432739, appeals the district court's dismissal of his civil rights complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Fairris argues that Texas Department of Criminal Justice officials violated his First Amendment right to free exercise of his religious beliefs as a member of the "Church of Aryan Nation Jesus Christ Christian" by requiring him to live in an integrated two-man

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

cell. Racial integration does not violate Fairris' First Amendment right to free exercise of religion. See Creel v. Hale, No. 92-8666 (5th Cir. May 6, 1993) (unpublished).** Because Fairris has no constitutionally protected interest in a racially-segregated cell assignment, the district court did not err in dismissing his complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). See Black v. Warren, 134 F.3d 732, 734 (5th Cir. 1998).

Fairris' 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 district court's dismissal of Fairris' complaint and the dismissal of this appeal both count as strikes under 28 U.S.C. § 1915(g). Fairris is cautioned that if he accumulates three "strikes" under 28 U.S.C. § 1915(g), he will not be able to 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.

** Because Creel was issued before January 1, 1996, it is precedential. See 5TH CIR. R. 47.5.3.