

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-31047
Summary Calendar

JUSTO E. ROQUE, JR.,

Plaintiff-Appellant,

versus

RICHARD L. STALDER; C. M. LENSING, C. MOORE,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 02-CV-581

February 18, 2002

Before BARKSDALE, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Justo E. Roque, Jr., Louisiana prisoner #295066, appeals from the dismissal of his 42 U.S.C. § 1983 complaint for failure to exhaust administrative remedies, pursuant to 42 U.S.C. § 1997e(a), and as frivolous, pursuant to 28 U.S.C. § 1915 (e)(2)(B)(i). Roque moves for appointment of counsel; his motion for appointment of counsel is DENIED.

Roque contends that the district court erred by dismissing his complaint for failure to exhaust because his administrative

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

remedy applications were wrongly rejected, with no legal reasons provided for the rejections. He does not argue that untimeliness is an illegal reason for rejection, however. He also argues that the district court erred by dismissing his substantive claim as frivolous.

Roque did not exhaust his administrative remedies, which were rejected as untimely. *Booth v. Churner*, 532 U.S. 731, 740-41 (2001); *Marsh v. Jones*, 53 F.3d 707, 710 (5th Cir. 1995). The district court did not err by dismissing the complaint for failure to exhaust administrative remedies or by dismissing the complaint as frivolous. *Rourke v. Thompson*, 11 F.3d 47, 49 (5th Cir. 1993).

Roque's appeal is without arguable merit and is dismissed as frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Roque previously had an appeal dismissed as frivolous. *Roque v. INS*, No. 99-30719 (5th Cir. Jun. 14, 2000) (unpublished). The dismissal of Roque's complaint and the dismissal of this appeal count as two strikes against Roque for purposes of 28 U.S.C. § 1915(g). *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). Because Roque has accumulated three strikes, he may not proceed in forma pauperis in any civil action or appeal unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

APPEAL DISMISSED. APPOINTMENT OF COUNSEL DENIED. 28 U.S.C. § 1915(g) SANCTION IMPOSED.