

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40087
Conference Calendar

CYRUS C. KING,

Plaintiff-Appellant,

versus

UNIDENTIFIED YATES, Lieutenant, Coffield Unit; UNIDENTIFIED
DEWRY, Lieutenant, Coffield Unit; UNIDENTIFIED MARTIN,
Officer, Coffield Unit,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:01-CV-365

August 21, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Cyrus C. King, Texas inmate # 521582, appeals the dismissal of his civil rights complaint for failure to comply with the district court's order that he pay a partial initial filing fee of \$1.06. King offers no reason on appeal for why he refused to comply with the court's order to pay the filing fee. Nor does the record indicate that he was justified in refusing to pay the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

filing fee. Given that King is not barred by Texas's statute of limitations from refiling his complaint, the district court did not abuse its discretion in dismissing his complaint under FED. R. Civ. P. 41(b). McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988).

King's appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, his appeal is DISMISSED. See 5th Cir. R. 42.2. King is cautioned that the dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). King is also cautioned that if he accumulates three "strikes" under § 1915(g), he will not be able to proceed IFP 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 § 1915(g).