

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40172
Conference Calendar

ROY L. RUSSELL,

Plaintiff-Appellant,

versus

KATHLEEN HAWKS, Director; RONALD G. THOMPSON,
Regional Director; JOHN ASHCROFT, U.S. ATTORNEY GENERAL,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:01-CV-560

August 21, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Roy L. Russell, federal prisoner #21767-009, filed this civil rights action, under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), asserting that his due process rights were violated because the defendants denied him a copy of the district court's findings of facts regarding disputed issues at sentencing. The district court dismissed the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) & (ii), concluding both that 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

claim was frivolous and that Russell had failed to state a claim upon which relief could be granted. Russell has not shown that the defendants had a constitutional duty to supply the findings in question. Additionally, the evidence shows that Russell was told how to obtain a copy of the findings in the defendants' responses to his prison grievances. As such, Russell has failed to establish that he was deprived of a right secured by the Constitution or laws of the United States. American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999) (42 U.S.C. § 1983 case). The district court did not err in dismissing Russell's complaint for failure to state a cause of action. Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). Accordingly, Russell's appeal is without arguable merit and is DISMISSED. 5TH CIR. R. 42.2.

The district court's dismissal of the original complaint and the dismissal of this appeal each count as a strike for purposes of 28 U.S.C. § 1915(g). Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Russell is warned that if he accumulates three strikes, he may not proceed IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

APPEAL DISMISSED; SANCTIONS WARNING ISSUED.