

April 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41560
Conference Calendar

DAVID SELVER,

Plaintiff-Appellant,

versus

COLLIN COUNTY DISTRICT COURT; COLLIN COUNTY DETENTION
FACILITY; CITY OF MCKINNEY; CITY OF PLANO POLICE DEPARTMENT;
DEPARTMENT OF PUBLIC SAFETY, Garland, Texas

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:02-CV-218

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

David Selver, Texas prisoner # 160221, appeals the dismissal without prejudice of his Eighth Amendment claims. His brief is devoid of legal argument and, given its most liberal construction, simply asserts that he amended his complaint to delete the claims that he is illegally incarcerated and to raise only his Eighth Amendment claim. He does not assign error to the dismissal of that claim for failure to file an amended complaint

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

within the period prescribed by the magistrate judge. He has therefore not presented an issue for this court to review. Selver's appeal is therefore without arguable merit and is dismissed as frivolous. 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983).

Selver is informed that 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the strike he accumulated for the dismissal of Selver v. Ford Motor Credit Co., No. 02-11044 (5th Cir. Jan. 24, 2003) (unpublished). See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). Selver also garnered a strike from the dismissal as frivolous of his § 1983 complaint in Selver v. Liberty Mutual Ins., No. 02-CV-1643 (N.D. Tex. Oct. 28, 2002) (unpublished). Selver has thus accumulated three "strikes" under 28 U.S.C. § 1915(g). 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.