

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50380
Summary Calendar

ROBERT ARNOLD MOSS,

Plaintiff-Appellant,

versus

SUSAN JEAN VIGEON,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. P-02-CV-14

October 9, 2002

Before DAVIS, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Robert Arnold Moss, Texas prisoner #935058, appeals from the dismissal of his civil rights action as frivolous pursuant to 28 U.S.C. § 1915A(b)(1). Moss moves for appointment of counsel. His motion is DENIED.

Moss does not allege that Susan Jean Vigeon was a state actor; Vigeon therefore could not be liable for a federal civil rights violation arising from any actions involving Moss unless

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

she was conspiring with a state actor. See *Cinel v. Connick*, 15 F.3d 1338, 1343 (5th Cir. 1994). Moss does not allege any conspiracy involving a state actor; he has failed to allege any nonfrivolous claims against Vigeon.

Moss's appeal is without arguable merit and is frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). The dismissal of Moss's action and the dismissal of his appeal count as two "strikes" against Moss for purposes of 28 U.S.C. § 1915(g). *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Moss is warned that once he obtains three "strikes" he will be barred from proceeding in forma pauperis (IFP) in any civil action or appeal unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

APPEAL DISMISSED. 5TH CIR. R. 42.2. APPOINTMENT OF COUNSEL DENIED. SANCTION WARNING ISSUED. ALL MOTIONS DENIED.