

April 20, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20527
Conference Calendar

GUY L. ALLEN,

Plaintiff-Appellant,

versus

WAYNE SCOTT, Director; KYLE RACKLEY; BOARD OF DIRECTORS,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-03-CV-1262

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Guy L. Allen, Texas prisoner #642038, appeals from the district court's dismissal with prejudice of his civil-rights lawsuit, filed under 42 U.S.C. § 1983, as malicious pursuant to 28 U.S.C. § 1915A(b)(1). The claims in Allen's instant lawsuit are duplicative of his claims in an earlier lawsuit that was dismissed in district court as frivolous. As his instant claims were duplicative, the district court properly dismissed them as malicious pursuant to 28 U.S.C. § 1915A(b)(1). See Pittman v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Moore, 980 F.2d 994, 994-95 (5th Cir. 1993); Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988).

As Allen's appeal is without arguable merit, it is DISMISSED AS FRIVOLOUS. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. Allen's motion for appointment of counsel on appeal is DENIED.

The dismissal of the instant appeal as frivolous and the district court's dismissal of Allen's instant lawsuit both count as strikes under the Prison Litigation Reform Act. See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Allen previously received two strikes when his civil-rights lawsuits were dismissed as frivolous in Allen v. Bluebird Bus Co., No. 4:98-CV-3414 (S.D. Tex. July 29, 1999), and in Allen v. Weems, No. 6:02-CV-56 (E.D. Tex. Apr. 8, 2002). Because Allen has accumulated at least three strikes under 28 U.S.C. § 1915(g), he is BARRED from proceeding in forma pauperis 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. 28 U.S.C. § 1915(g). As Allen is not proceeding in forma pauperis in the instant appeal, Allen is also WARNED that sanctions may be imposed in response to future frivolous filings.

APPEAL DISMISSED AS FRIVOLOUS; MOTION FOR APPOINTMENT OF COUNSEL DENIED; 28 U.S.C. § 1915(g) BAR IMPOSED; SANCTIONS WARNING ISSUED.