

August 19, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40203  
Conference Calendar

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RICHARD ZANE HILL,

Petitioner-Appellant,

versus

JANIE COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. C-02-CV-517  
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Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Richard Zane Hill, Texas prisoner # 680838, appeals from the district court's dismissal of his 42 U.S.C. § 1983 complaint for failure to state a claim. Hill is seeking a mandatory-release date and contends that he has adequately stated a violation of his Eighth and Fourteenth Amendment rights.

"[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Thus, Hill's complaint did not state a cognizable claim for relief under 42 U.S.C. § 1983. See 28 U.S.C. § 1915A(b)(1); see also Berry v. Brady, 192 F.3d 504, 507 (5th Cir. 1999).

This appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5TH CIR. R. 42.2.

The district court's dismissal and this court's dismissal count as two strikes for purposes of 28 U.S.C. § 1915(g). See generally Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Hill is WARNED that if he accumulates three strikes he may not proceed 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. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; 28 U.S.C. § 1915(g) SANCTIONS WARNING ISSUED.