

August 20, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40382
Conference Calendar

JOHN HANDLEY,

Plaintiff-Appellant,

versus

JANIE M. COCKRELL, Director, Texas Department of Criminal
Justice, Institutional Division; JASON T. HEATON, Warden;
RONALD C. FOX, Major,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:02-CV-589

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

John Handley, Texas prisoner # 582374, appeals the
magistrate judge's dismissal of his 42 U.S.C. § 1983 action as
frivolous and for failure to state a claim pursuant to 28 U.S.C.
§ 1915A(b)(1). Handley argues that prison officials were
deliberately indifferent to his safety in that they refused to
place him in protective custody despite threats that were made
against him because he is an ex-police officer. The record

* 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that this opinion should not be published and is not precedent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.

indicates that prison officials did not ignore or act with deliberate indifference to Handley's complaints. They conducted several life endangerment studies, but investigations did not corroborate Handley's allegations. They also placed him in safe-keeping, which minimized his contact with inmates in the prison's general population. Therefore, the magistrate judge did not err in dismissing Handley's claim as frivolous and for failure to state a claim. See Horton v. Cockrell, 70 F.3d 397, 400-02 (5th Cir. 1995).

Handley's appeal is without arguable merit and, therefore, is DISMISSED as frivolous. 5TH CIR. R. 42.2; see also Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The dismissal of this appeal as frivolous and the magistrate judge's dismissal of Handley's 42 U.S.C. § 1983 complaint as frivolous and for failure to state a claim each count as a "strike" under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Handley is cautioned 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. 28 U.S.C. § 1915(g).

APPEAL DISMISSED; THREE-STRIKES WARNING ISSUED.