

**FILED**

January 13, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-41450  
Summary Calendar

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JAMES ISHMAEL TIBBS,

Plaintiff-Appellant,

versus

JANIE COCKRELL; ROCHELLE MCKINNEY;  
WILLIAM E. GONZALEZ; TRUMAN G. BLOCKER;  
LEROY SCHAFFNER,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. G-03-CV-671  
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Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

James Ishmael Tibbs, Texas prisoner # 702590, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal, following the district court's order dismissing his civil-rights complaint pursuant to the three-strikes bar, 28 U.S.C. § 1915(g). Leave to appeal IFP is GRANTED. 28 U.S.C. § 1915(g).

Because Tibbs's prison trust fund account statement shows that his average monthly deposits and his average monthly balance for the six-month period preceding the filing of his notice of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

appeal were zero, no initial partial filing fee is required. The agency having custody of Tibbs is ORDERED to forward funds from his prison trust fund account to the clerk of the district court on a regular basis as provided in 28 U.S.C. § 1915(b)(1) and (2), until the full filing fee of \$105 is paid. The clerk of this court is DIRECTED to send a copy of this order to the agency having custody of Tibbs.

However, it is clear from Tibbs's submissions that he complains only of a disagreement with his medical treatment. A 42 U.S.C. § 1983 claim will not lie for alleged lack of medical treatment where the dispute is over the type or quality of treatment rendered. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Consequently, Tibbs's appeal is DISMISSED as frivolous. 5TH CIR. R. 42.2.

IFP GRANTED; APPEAL DISMISSED AS FRIVOLOUS.