

August 19, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50136
Conference Calendar

SAMMY ESPINOZA RODRIGUEZ,

Plaintiff-Appellant,

versus

LEPHER JENKINS; BILL CHEATHAM; SAMMY BUENTELLO;
GARY JOHNSON; WAYNE SCOTT,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-02-CV-559-EP

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Sammy Espinoza Rodriguez, Texas prisoner # 459516, has filed a motion in this court to proceed in forma pauperis (IFP) following the district court's denial of his IFP motion and certification that the appeal would not be taken in good faith. Rodriguez presents conclusional arguments that the defendants violated his constitutional rights and that his claims were not time-barred. He has not shown that his appeal would have arguable merit.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Further, a review of the record reveals that an appeal would be frivolous. His appeal is therefore DISMISSED AS FRIVOLOUS. See Baugh v. Taylor, 117 F.3d 197, 202 n.24 (5th Cir. 1997). The district court's dismissal of Rodriguez's 42 U.S.C. § 1983 action and the dismissal of this appeal both count as strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Rodriguez is warned that if he accumulates a third strike, he may not proceed IFP 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).

IFP MOTION DENIED; APPEAL DISMISSED; SANCTIONS WARNING ISSUED.