

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60625
Conference Calendar

MARK DANE ROGERS,

Plaintiff-Appellant,

versus

WILLIAM RICHARDSON; DEBBIE GRAHAM; LINDA KEETON;
BOBBY BOBBITT,

Defendants-Appellees.

MARK DANE ROGERS,

Plaintiff-Appellant,

versus

GARY THAGGARD; JOE THORNTON; H. RAGSDALE,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC Nos. 3:01-CV-928-BN &
3:02-CV-500-N

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Mark Dane Rogers, now Mississippi prisoner # 41282, appeals from the magistrate judge's judgment for the defendants in his consolidated civil-rights lawsuits, filed pursuant to 42 U.S.C. § 1983, alleging that he was deprived of proper medical care while he was a pretrial detainee. His sole argument on appeal is that the magistrate judge utilized an incorrect legal standard when considering his claims. Examination of the record shows that the magistrate judge used the same legal standard asserted by Rogers in the instant appeal.

The instant appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the appeal is DISMISSED. See 5TH CIR. R. 42.2.

The dismissal of this appeal counts as a strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). We caution Rogers that once 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; SANCTION WARNING ISSUED.