

FILED

August 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10320
Conference Calendar

THOMAS P. BUDNICK,

Plaintiff-Appellant,

versus

HAMPDEN COUNTY HOUSE OF CORRECTION,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:03-CV-3048-N

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Thomas P. Budnick, # 34-123286, a Massachusetts inmate housed at the Hampden County House of Corrections in Ludlow, Massachusetts, appeals the dismissal of his complaint pursuant to 28 U.S.C. § 1406(a) for lack of proper venue. See 28 U.S.C. § 1391(b). We hold that the district court did not abuse its discretion in dismissing Budnick's complaint for lack of proper venue. See Lowery v. Estelle, 533 F.2d 265, 267 (5th Cir. 1976).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because the appeal lacks arguable merit, it is frivolous and is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Budnick is cautioned that once he accumulates three strikes, he may not proceed in forma pauperis (IFP) in any civil action or appeal filed while he is incarcerated or detained in any facility. As Budnick is not proceeding IFP in the instant appeal, Budnick also is WARNED that sanctions may be imposed in response to future frivolous filings.

APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED.