

April 18, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-41523  
Summary Calendar

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CARL RAYMOND DOLAN,  
  
Plaintiff-Appellant,

versus

J. KEITH GARY; ET AL.,  
  
Defendants,

J. KEITH GARY; UNKNOWN OFFICERS of Grayson County Texas; NEOSHA TRIMBLE; SHEILA RATHFON; CONTROL MONITOR FNU PICKETT; GRAYSON COUNTY JAIL; GRAYSON COUNTY COMMISSIONERS,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:02-CV-286  
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Before HIGGINBOTHAM, BENAVIDES and DENNIS, Circuit Judges.

PER CURIAM:\*

Carl Raymond Dolan, Texas prisoner #1004499, appeals the district court's dismissal of his 42 U.S.C. § 1983 suit as frivolous and for failure to state a claim pursuant to 28 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 1915(e). His civil rights lawsuit alleged that the defendants failed to protect him from an attack by another inmate in the Grayson City Jail.

Dolan does not address the district court's finding that the defendant's actions were, at most, negligent, and did not constitute deliberate indifference, and he alleges no facts which would indicate that the defendants knew Dolan faced an excessive risk of harm from the other inmate on the day in question. See Farmer v. Brennan, 511 U.S. 825, 833, 837 (1994). Dolan's arguments that the district court erred in dismissing his lawsuit without first allowing discovery, that the district court erred in not allowing him to have a jury trial, and that the dismissal of his lawsuit constituted a denial of access to the courts are without merit. The district court can dismiss a suit "at any time" if it determines that it is frivolous or fails to state a claim. See 28 U.S.C. § 1915(e). In addition, the district court did not abuse its discretion in denying Dolan's motions for appointment of counsel. See Cupit v. Jones, 835 F.2d 82, 86 (5th Cir. 1987).

As Dolan's appeal lacks arguable merit, it is DISMISSED AS FRIVOLOUS. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2. The district court's dismissal of his case as frivolous and for failure to state a claim and the dismissal of the instant appeal as frivolous count as two strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d

383, 385-87 (5th Cir. 1996). Dolan is cautioned that once he accumulates three strikes, he will not be permitted to 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 AS FRIVOLOUS; SANCTION WARNING ISSUED.