

October 24, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-30680
Conference Calendar

ANTHONY JOSEPH WILLIAMS,

Plaintiff-Appellant,

versus

CURT WAINWRIGHT; JOSH OTWELL; ANGIE HUFF; RAY HANSON,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:05-CV-34

Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Anthony Joseph Williams, Louisiana prisoner # 397646, appeals the district court's dismissal of his civil rights complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Williams argues that the district court misconstrued his complaint as seeking relief for a deprivation of property which occurred in November 2003, when in fact the complaint alleged claims arising out of a January 2005 incident of retaliation.

The record shows that Williams submitted the complaint to prison authorities for mailing on December 26, 2004; thus, it is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not possible that the complaint alleged claims arising out of an incident occurring in January 2005. Accordingly, the dismissal of the complaint was not an abuse of discretion. See Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). Williams's appeal is without arguable merit and is therefore dismissed as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); see 5TH CIR. R. 42.2.

The district court's dismissal of Williams's complaint and this court's dismissal of his appeal count as two strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Williams is cautioned that if he accumulates three strikes, he may no longer 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 § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.