

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2006

Charles R. Fulbruge III
Clerk

No. 05-41466
Summary Calendar

GERALD KING,

Plaintiff-Appellant,

versus

BRAD LIVINGSTON, Executive Director of Texas Department of Criminal Justice; ED OWENS, Assistant Executive Director of Texas Department of Criminal Justice; NATHANIEL QUARTERMAN, Director, Texas Department of Criminal Justice, Correctional Institutions Division; MARGO GREEN, Region III Director; J.P. GUYTON, Assistant Region III Director; CHRISTINA CRAIN, Chairman, Texas Board of Criminal Justice; CURTIS MCKNIGHT, Ramsey I Unit, Head Warden; KELVIN SCOTT, Ramsey I Unit, Assistant Warden; ERNESTO RODRIGUEZ, Lieutenant; VALERIE POWELL, Correctional Officer; MICHAEL KITCHEN, Region III Disciplinary Captain; PATRICIA WEAVER, Counsel Region III; KELLY GUIDRY, JR., Major; AQUISHA GUIDRY, Correctional Officer III; MELVERICK PLAYER, Correctional Officer III; V. STACY HECHT, Correctional Officer Ramsey I Unit Property Officer; ANGELA PERRY, Lieutenant; ELEANOR NOLAN, LVN; CHERYLL HENDRICKS, LVN; TRACY JOHNSON PCA; RONNIE HILL, Correctional Officer IV; CHIRMIRA AUGHT JONES, PCA; SUSIE CHILES, Mail System Coordinator Panel; KENNETH O. NEGBENEBOR, Head Warden, Ramsey II Unit; SAMUEL D. SEALE, IV, Assistant Warden, Ramsey II Unit; SHARON S. MOATES, Mailroom Supervisor; MARION LYNN SMITH, Mailroom Supervisor; ELIZABETH MURPHY, Mail Clerk, Ramsey I Unit; LAURA WHITE, Mail Clerk, Ramsey II Unit; MARIA C. HERNANDEZ, Mail Clerk, Ramsey II Unit; SANDRA SMOCK, FNP, Ramsey II Unit; TODD BOUTON, PA, Ramsey II Unit; KEVIN HANNA, Health Administrator,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:05-CV-464

Before DeMOSS, STEWART and PRADO, Circuit Judges.

PER CURIAM:*

Gerald King, Texas prisoner # 589458, has filed a motion for leave to proceed in forma pauperis on appeal following the district court's dismissal of his 42 U.S.C. § 1983 action pursuant to 28 U.S.C. § 1915(g). For the first time on appeal, King alleges that he was in imminent danger of serious physical injury because the defendants failed to evacuate him during Hurricane Rita and because the defendants attempted to induce his death medically. King may not raise new allegations or legal theories for the first time on appeal. See Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999).

King argues that he is in imminent danger of serious physical injury because he has been assaulted several times by the defendants and other inmates and because the defendants have attempted to cause him serious physical injury from the time of Hurricane Rita to the present. King fails to meet the showing required to avoid application of the three strikes bar under 28 U.S.C. § 1915(g). See Banos v. O'Guin, 144 F.3d 883, 884-85 (5th Cir. 1998).

* 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.

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IT IS ORDERED that King's IFP motion is DENIED. Because the district court properly applied 28 U.S.C. § 1915(g), King's appeal is without merit and is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.