

June 19, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-10578  
Conference Calendar

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LEROY HARRIS, JR.,

Plaintiff-Appellant,

versus

BOBBY ARNOLD; JULITO P. UY; JOE NUNN,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:05-CV-131  
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Before JONES, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:\*

Leroy Harris, Jr., Texas prisoner # 580009, appeals the dismissal of his civil rights complaint against officials of the Texas Department of Criminal Justice and a physician as frivolous and for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e) 1915A, 1997e(c)(1). Harris fails to show that the district court erred when it rejected his claim that his Eighth Amendment rights were violated when he was ordered to work with an axe in the rain. See Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989). He also fails to show that medical treatment was delayed in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

violation of the Eighth Amendment. See Mendoza v. Lynaugh, 989 F.2d 191, 195 (5th Cir. 1993); Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). The district court's dismissal is affirmed.

This court's affirmance of the district court's dismissal of Harris's complaint as frivolous and for failure to state a claim 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). Harris is warned that if he accumulates three strikes under § 1915(g), he will not be able 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 § 1915(g).

AFFIRMED; SANCTION WARNING ISSUED.