

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2007

No. 07-30483
Conference Calendar

Charles R. Fulbruge III
Clerk

JOSE CRISTOBAL CARDONA

Plaintiff-Appellant

v.

F MENIFEE; K MONTGOMERY

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:06-CV-1705

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:*

Jose Cristobal Cardona, federal prisoner # 40869-080, appeals from the dismissal of his *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), action as frivolous and for failure to state a claim. Cardona contends that he had a First Amendment right to correspond with a prisoner in another institution whom he purported to represent as a next friend in that other prisoner's 28 U.S.C. § 2255 action. Cardona did not establish his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

status as a next friend in the other prisoner's proceeding, see *Whitmore v. Arkansas*, 495 U.S. 149, 164 (1990); *Magallon v. Livingston*, 453 F.3d 268, 271 (5th Cir.), cert. denied, 126 S. Ct. 2974 (2006); his First Amendment claim rests on a flawed factual premise. Moreover, Cardona has no general First Amendment right to communication with prisoners in other prison units. See *Turner v. Safely*, 482 U.S. 78, 91 (1987).

Cardona's appeal is without arguable merit and is frivolous. See *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. See 5TH CIR. R. 42.2.

The district court's dismissal of Cardona's action 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, 387-88 (5th Cir. 1996). The district court's dismissal and this court's dismissal of the appeal in *Cardona v. Tuite*, No. 07-30041 (5th Cir. Dec. 10, 2007) (unpublished), also count as two strikes under § 1915(g). *Id.* As Cardona has now accumulated at least three strikes, he is barred from proceeding in forma pauperis pursuant to § 1915 while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR IMPOSED.