

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 18, 2009

Charles R. Fulbruge III
Clerk

No. 08-50600
Summary Calendar

GEORGE STEPHEN CLEGG

Plaintiff-Appellant

v.

DAWN GROUNDS; KENNETH DEAN; FNU FULLMAN

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:08-CV-82

Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:*

George Stephen Clegg, Texas prisoner # 681197, sued prison officials under 42 U.S.C. § 1983 asserting that a policy prohibiting inmates from using the restroom during two-hour library sessions effectively prevents him from conducting legal research in violation of his right of access to the courts. He asserted that he has a medical condition that causes him to urinate frequently. The district court dismissed the suit as frivolous and for failure to state a claim

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

because Clegg failed to assert an actual injury as a litigant that resulted from the policy. The court denied Clegg's motion for leave to proceed in forma pauperis (IFP) on appeal, certifying that the appeal was not taken in good faith. Clegg seeks this court's leave to proceed IFP.

Although Clegg asserts generally that his attempts to obtain post-conviction relief and an out-of-time appeal were adversely affected by the prison policy, he fails to assert any facts that demonstrate how he was injured as a litigant. Accordingly, he fails to show that he will raise a nonfrivolous issue on appeal. *See Lewis v. Casey*, 518 U.S. 343, 351 (1996). The motion is denied and the appeal is dismissed as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.

The district court's dismissal of Clegg's complaint and our dismissal of his appeal count as two strikes for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387 (5th Cir. 1996). Clegg is cautioned that once he accumulates three strikes, he may not proceed IFP 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; IFP MOTION DENIED; SANCTION WARNING ISSUED.