

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

No. 13-20590
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 17, 2014

Lyle W. Cayce
Clerk

MAURICE MITCHELL,

Plaintiff-Appellant

v.

THOMAS O. REYNOLDS, Sergeant; AQUISHA GUIDRY, Grievance
Coordinator II; O'MYRA MONTEZ; ALETHEA NORTH-WILLIAMS,
Correctional Officer IV,

Defendants-Appellees

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:13-CV-708

Before WIENER, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Maurice Mitchell, Texas prisoner # 648121, appeals the district court's dismissal of his 42 U.S.C. § 1983 civil rights complaint as barred by the "three strikes" provision of 28 U.S.C. § 1915(g). As he did below, Mitchell challenges the district court's assignment of a strike for the dismissal

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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as frivolous of the complaint in *Jackson v. Garner*, No. 96-cv-130 (E.D. Tex. Oct. 9, 1996). Mitchell asserts that he was not a plaintiff in that case.

The district court's docket sheet in *Jackson* confirms that Mitchell was in fact one of the prisoner-plaintiffs and, more specifically, that his complaint was dismissed as frivolous. The district court thus properly concluded that the dismissal counted as a strike for purposes of § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387 (5th Cir. 1996). The strikes assigned to Mitchell based on the dismissal of a prior state-court civil lawsuit, however, should not have counted. *See* 28 U.S.C. §§ 451, 1915(g). Accordingly, the district court's judgment is vacated, and the case is remanded for further proceedings consistent with this opinion.

We note that, after filing the instant lawsuit, Mitchell accrued two additional strikes for the district court's dismissal of his § 1983 lawsuit and our dismissal of his appeal as frivolous in *Mitchell v. Henderson*, No. 13-20262, 2013 WL 6659745 (5th Cir. Dec. 18, 2013) (unpublished). *See Adepegba*, 103 F.3d at 387. Although he had not accumulated three strikes at the time that he filed the instant suit, Mitchell has now done so. Consequently, Mitchell is warned that he will be barred from proceeding in forma pauperis in any future civil actions filed while he is incarcerated, absent a showing that he is in imminent danger of serious physical injury. § 1915(g). Mitchell is also cautioned that any future frivolous or repetitive filings in this court or any court subject to our jurisdiction will subject him to additional sanctions, as will his failure to withdraw any pending matters that are frivolous, repetitive, or otherwise abusive.

VACATED AND REMANDED; SANCTION WARNING ISSUED;
28 U.S.C. § 1915(g) BAR IMPOSED.