

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-41195  
Conference Calendar

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REYES FLORES,

Plaintiff-Appellant,

versus

MICHAEL UNIT; TEXAS DEPARTMENT OF CRIMINAL JUSTICE -  
INSTITUTIONAL DIVISION COMPANY DEPARTMENTS,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:96-CV-716  
- - - - -

December 9, 1997

Before BARKSDALE, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Reyes Flores, # 615077, appeals the dismissal of his 42 U.S.C. § 1983 action as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Flores argues that the district court erred by dismissing his complaint pursuant to § 1915(e) before issuance of a summons pursuant to Fed. R. Civ. P. 4 and absent a motion to dismiss; that the district court erred in dismissing his complaint for failure to state a claim because the named

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

defendant was not amenable to suit; and that the district court erred in applying § 1915(e)(2)(B)(i) because it is unconstitutional on its face and as applied to this action.

We have reviewed the record and the district court's opinion and found no error in the reasoning of the district court in the dismissal of Flores' complaint. See Flores v. Michael Unit, CA No. 6:96cv716 (E.D. Tex. Nov. 5, 1996). Flores' appeal is without arguable merit and, thus, 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.

Flores is hereby put on notice that the dismissal of this appeal as frivolous constitutes his third strike under the PLRA and that he may not proceed IFP in any civil action or appeal filed while he is in prison unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g); Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1997).

APPEAL DISMISSED.