

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-11258
Conference Calendar

L. T. RUNELS,

Plaintiff-Appellant,

versus

D.L. KEESEE,
Sheriff of Lubbock County Texas,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:97-CV-262-C
- - - - -

August 18, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

L.T. Runels, Texas prisoner # 707445, appeals the district court's dismissal of his 42 U.S.C. § 1983 action as malicious and repetitive pursuant to 28 U.S.C. § 1915. Runels argues on appeal that, being a layman in the law, his first filing of this § 1983 action was dismissed without prejudice because he did not know what to file or how to file. He alleges that he was assisted by a writ writer in filing this second suit to correct the errors of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the first suit. He states that in this second filing, he has clearly shown a constitutional violation.

We have reviewed the record and the district court's opinion and find no reversible error. Runels v. Keese, No. 5:97-CV-262-C (N.D. Tex. Oct. 15, 1997). Contrary to appellant's assertion, the record of the prior action shows that the suit was dismissed with prejudice as frivolous. We further find that Runels' appeal is without arguable merit, and we DISMISS IT AS FRIVOLOUS. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.

Runels 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 AS FRIVOLOUS.