

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-20526
Conference Calendar

JAMES ELLIS, JR.,

Plaintiff-Appellant,

versus

R. THALER, Warden; WAYNE SCOTT,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-96-CV-485
- - - - -

August 20, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

James Ellis, Jr., Texas prisoner #661137, appeals from the dismissal of his civil rights action as frivolous. Ellis contends his placement in administrative segregation violated the Due Process Clause. He argues that Texas prison regulations created a liberty interest against placement in administrative segregation and that failure to follow prison regulations is itself a due process violation. Ellis contends that prison officials were deliberately indifferent to his health and safety by placing him in administrative segregation and by placing him with an HIV-positive inmate. He argues that the district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

should have required the warden to obtain his former cellmate's prison records to ascertain whether his cellmate was disposed to violence, as Ellis alleges (for the first time on appeal) that he was. Ellis contends that retaliation may be inferred from the fact that he was placed in an unsafe situation after he filed a grievance regarding his placement in administrative segregation and requested the name of the person who had him placed in administrative segregation. Ellis argues that the defendants were personally involved in the actions underlying his complaint.

We have reviewed Ellis's brief and the record, and we have found no nonfrivolous issues. Accordingly, we dismiss Ellis's claims for essentially the reasons relied upon by the district court. *Ellis v. Thaler*, No. H-96-485 (S.D. Tex. June 17, 1997).

Ellis's appeal is without arguable merit and is frivolous. See *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). We previously dismissed an appeal by Ellis as frivolous, following the dismissal of his complaint as frivolous. *Ellis v. Bozarth*, No. 98-50205 (5th Cir. Jun. 17, 1998)(unpublished). The district court's dismissal of the present case and our dismissal of the appeal constitute strikes three and four against Ellis for purposes of 28 U.S.C. § 1915(g). *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). Because Ellis has more than three strikes, he may not bring a civil action or appeal as a prisoner proceeding *in forma pauperis* unless he is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

APPEAL DISMISSED. 5TH CIR. R. 42.2. SANCTION IMPOSED UNDER 28 U.S.C. § 1915(g).