

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-30681
Conference Calendar

EARNEST L. SMITH,

Plaintiff-Appellant,

versus

LISA TOLER, Deputy ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 97-CV-1122-S
- - - - -

June 17, 1999

Before EMILIO M. GARZA, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:*

Earnest L. Smith, Louisiana prisoner #183705, appeals from the dismissal of his civil rights complaint as frivolous and the later denial of relief sought in an amended complaint. Smith moves for appointment of counsel; his motion for appointment of counsel is DENIED.

Smith contends that he was deprived of gift funds without due process and that he was deprived of medical care because he was denied medication. We have reviewed Smith's brief and the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

record, and we find Smith's due process contention frivolous because Louisiana provides adequate postdeprivation remedies. *Marshall v. Norwood*, 741 F.2d 761, 763-64 (5th Cir. 1984). Smith has failed to brief his medical-care contention for appeal; we do not consider that contention. *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Smith's appeal is without arguable merit and is frivolous. Accordingly, the appeal is DISMISSED. 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). We caution Smith that once he accumulates three strikes, he may not proceed *in forma pauperis* (IFP) in any civil action or appeal filed while he is in prison unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; WARNING ISSUED.