

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40931
Conference Calendar

WILLIAM EARL CUNNINGHAM,

Plaintiff-Appellant,

versus

LELAND HEUSZEL, Warden; MELTON BROCK, Warden;
CHARLES FRIZZEL, Classification Manager;
JIMMY ALFRED, Warden,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:96-CV-148
- - - - -

August 20, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

William Earl Cunningham, Texas prisoner #643591, appeals from the dismissal of his civil rights complaint as frivolous. Cunningham's motion to make a personal appearance on appeal is construed as a request for oral argument; all three of his requests for oral argument are DENIED. Cunningham contends that the defendants failed to protect him from an attack by inmate John Kirven; that they conspired against him; and that they placed him in administrative segregation against his will.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Cunningham does not brief his contentions regarding conspiracy and placement in administrative segregation beyond mentioning them. He has failed to brief those issues for appeal. *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Regarding Cunningham's contention that the defendants failed to protect him from Kirven, we have reviewed the file and Kirven's brief and we have found no nonfrivolous issues. Accordingly, we dismiss Cunningham's appeal for essentially the same reasons relied upon by the district court. *Cunningham v. Heuszel*, No. 9:96-CV-148 (E.D. Tex. Jun. 17, 1997).

Cunningham'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 two appeals by Cunningham as frivolous, following the dismissal of two of his complaints as frivolous. *Cunningham v. Woods*, No. 97-10377 (5th Cir. Oct. 31, 1997)(unpublished); *Cunningham v. de la Vaga*, No. 97-40166 (Oct. 31, 1997)(unpublished). The district court's dismissal of the present case and our dismissal of the appeal constitute strikes five and six against Cunningham for purposes of 28 U.S.C. § 1915(g). *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). Because Cunningham 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).