

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-60275  
Summary Calendar

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JARVIOUS COTTON,

Plaintiff-Appellant,

versus

KIRK FORDICE, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Southern District of Mississippi  
USDC No. 3:96-CV-141BN

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January 26, 1998  
Before JOLLY, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:\*

Jarvious Cotton, # 34463, appeals the district court's summary judgment for the defendants in his 42 U.S.C. § 1983 civil rights actions. Cotton's appeal is hereby SEVERED from that of his co-appellant Keith Brown, # 45542, for separate disposition. Cotton argues that the defendants denied him his right to vote.

The Prison Litigation Reform Act (PLRA) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, or 3 or more prior

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

occasions, while incarcerated on detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). “[D]ismissals as frivolous in the district courts or the court of appeals count [as strikes] for the purposes of [§ 1915(g)].” Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). A dismissal as frivolous by a district court does not count as a strike until the prisoner has exhausted or waived his appeals. Adepegba, 103 F.3d at 387. An affirmance by this court of a dismissal as frivolous by the district court does not count as a separate strike. Id. at 387. However, the dismissal of an appeal as frivolous counts as a separate strike for purposes of § 1915(g). Id. at 388.

Cotton has had three dismissals as frivolous by the district court and/or this court. See Cotton v. Hargett, No. 95-60284 (5th Cir. Aug. 22, 1995)(unpublished)(district court and court of appeals dismissed frivolous counts as two separate strikes); Cotton v. Fordice, No. 4:94CV202-S-D (N.D. Miss. Sept. 19, 1996) (district court dismissed case as frivolous). This appeal does not involve claims of imminent danger of serious physical injury. Cotton’s appeal is DISMISSED pursuant to § 1915(g). Cotton is hereby put on notice that he cannot file further appeals unless he meets the exception of § 1915(g).

APPEAL SEVERED and DISMISSED.