

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-10912  
Conference Calendar

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JIMMY D. GREEN-BEY,

Plaintiff-Appellant,

versus

WILLIAM STEPHENS, Assistant Warden,  
Individually and in his official capacity;  
ROBERT EASON, Major,  
Individually and in his official capacity,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 7:96-CV-138-X  
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June 17, 1999

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

PER CURIAM:\*

Jimmy D. Green-Bey, Texas prisoner # 475147, seeks leave to proceed in forma pauperis (IFP), following the district court's certification that his appeal from the denial of his motion for leave to file a civil-rights complaint was taken in bad faith.

Green-Bey argues that the district court abused its discretion in dismissing his complaint as frivolous. Green-Bey's complaint failed to allege that but for the retaliatory motive

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

his classification as a member of a disruptive group, the Crips, would not have occurred. Woods v. Smith, 60 F.3d 1161, 1166 (5th Cir. 1995).

Green-Bey's appeal is without arguable merit and is frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, Green-Bey's IFP motion is DENIED and 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) as does the district court's dismissal as frivolous of the original complaint. We caution Green-Bey that he has already accrued two strikes and that once he accumulates three strikes, 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. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; WARNING ISSUED.