

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10719
Conference Calendar

ELBERT SILAS GREEN,

Plaintiff-Appellant,

versus

PATTY FRIEND, Correctional Health Services,
Tarrant County Correctional Center, Tarrant
County Jail, Fort Worth, Texas; JOHN DOE,
Correctional Health Services; JANE DOE,
Correctional Health Services,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:98-CV-507-A
- - - - -

December 15, 1999

Before JOLLY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Elbert Silas Green, a Texas prisoner (# 764049), appeals from the district court's order denying his motion for a temporary restraining order ("TRO"). Insofar as Green is seeking a TRO, this court lacks jurisdiction over his appeal. See Faulder v. Johnson, 178 F.3d 741, 742 (5th Cir. 1999). Insofar as the TRO motion might be liberally construed as a motion for a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

preliminary injunction, Green has not remotely demonstrated that he might be able to satisfy any of the four prerequisites for the issuance of such relief. See Lakedreams v. Taylor, 932 F.2d 1103, 1107 (5th Cir. 1991). Regardless of which of those two ways this court interprets the motion, the appeal has no arguable merit and is DISMISSED as frivolous. See 5TH CIR. R. 42.2.

For purposes of the "three-strikes" provision, 28 U.S.C. § 1915(g), Green had already accumulated at least two strikes prior to the instant appeal. See Green v. Lampert, No. 98-10732 (5th Cir. Aug. 4, 1999) (affirmance of dismissal of complaint as frivolous); Green v. Wilder, No. 95-10756 (5th Cir. Oct. 18, 1995) (dismissal of appeal as frivolous); see Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996) (dismissal of a complaint as frivolous counts as a "strike" under § 1915(g), as does the dismissal of an appeal as frivolous). The instant dismissal counts as a third strike. Accordingly, Green is warned that he may not proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR IMPOSED.