

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Nos. 99-20454 & 99-20563
Conference Calendar

PHILLIP CHARLES MELONCON,

Plaintiff-Appellant,

versus

JEROME GODINICH, JR.,

Defendant-Appellee.

Appeals from the United States District Court
for the Southern District of Texas
USDC No. H-98-CV-2755

February 16, 2000

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

PER CURIAM:*

Phillip Charles Meloncon (#702760), a state prisoner, filed a civil rights action alleging that his appointed attorney, Jerome Godinich, Jr., had conspired with the prosecutor to secure the conviction for which he is incarcerated by advising him to waive his right to grand jury indictment and to consent to the filing of a felony information. The district court did not err in dismissing the complaint as frivolous under the rule in Heck

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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v. Humphrey, 512 U.S. 477, 487 (1994). Because these appeals are frivolous, they are DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.

Meloncon's pending motions are DENIED.

The dismissal of these appeals as frivolous counts as two strikes for purposes of 28 U.S.C. § 1915(g). Because of the strike for the district court's dismissal of the underlying judgment as frivolous, see Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996), Meloncon has accumulated three strikes in this case alone. Meloncon has at least one other strike related to his prior civil rights case. See Meloncon v. Nuchia, No. 97-20659 (5th Cir. July 7, 1998). Because Meloncon has accumulated at least four strikes, he is BARRED from proceeding 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 28 U.S.C. § 1915(g).

Jerome Godinich, Jr.'s motion for an award of attorney's fees and costs is DENIED.

APPEAL DISMISSED; MOTIONS DENIED.