

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20761
Conference Calendar

STEVEN E. DANIEL,

Plaintiff-Appellant,

versus

AMERICAN BROADCASTING CO.,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CV-3411
- - - - -

April 12, 2000

Before WIENER, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Steven E. Daniel, Texas prisoner #450142, seeks leave to proceed in forma pauperis (IFP), following the district court's certification that his appeal from the dismissal of his civil-rights complaint was taken in bad faith.

Daniel's motions for appointment of counsel are DENIED.

Daniel's allegations do not support a claim that the defendant entered into a conspiracy with prison officials to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

deprive Daniel of his constitutional rights. Accordingly, the district court did not abuse its discretion in dismissing the complaint as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i). See Harper v. Showers, 174 F.3d 716, 718 (5th Cir. 1999)

Daniel's appeal is without arguable merit and is frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

Accordingly, Daniel's IFP motion is DENIED and the appeal is DISMISSED. 5TH CIR. R. 42.2.

The district court's dismissal of the present case and this court's dismissal of Daniel's appeal count as two "strikes" against him for purposes of 28 U.S.C. § 1915(g). Daniel had already accumulated one strike in Daniel v. Scheiner, No. 99-20978 (S.D. Tex. Dec. 16, 1999). Because he now has three strikes under the statute, Daniel may not proceed IFP 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. § 1915(g).

IFP DENIED; APPEAL DISMISSED; SANCTION IMPOSED.