

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-40723
Summary Calendar

MITCHELL PITIE, also
known as Mitchell Pitre,

Plaintiff-Appellant,

versus

T. SIMPSON,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-99-CV-117
- - - - -

November 8, 1999

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

PER CURIAM:*

Mitchell Pitie, Texas prisoner # 593925, seeks to appeal in forma pauperis (IFP) the dismissal of his civil rights complaint under the "three strikes" provision of 28 U.S.C. § 1915(g). Pitre does not challenge the district court's determination that, on at least three prior occasions while incarcerated, he has brought an action or appeal in a United States court that has been dismissed as frivolous and/or for failure to state a claim.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Instead, he argues that he falls within the "imminent danger" exception of § 1915(g).

A review of the record and Pitie's appellate brief reveals that he has failed to establish that he was "under imminent danger of serious physical injury" at the time that he filed his action or his notice of appeal. See 28 U.S.C. § 1915(g); Baños v. O'Guin, 144 F.3d 883, 885 (5th Cir. 1998). Accordingly, his request for IFP is DENIED, and his appeal is DISMISSED. See id. Should Pitie wish to reinstate his appeal, he has 30 days from the date of this opinion to pay the full appellate filing fee to the clerk of the district court. See id.

IFP DENIED. APPEAL DISMISSED.