

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10107
Conference Calendar

CARL BERNARD HARRIS,

Plaintiff-Appellant,

versus

BARON TRUITT,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:00-CV-347

June 14, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Carl Bernard Harris, Texas prisoner No. 806634, appeals the district court's dismissal of his civil rights complaint as malicious. Harris acknowledges that this complaint raises the identical claims that he raised in another district court suit, and he concedes that he did not adequately investigate the status of that lawsuit prior to filing the instant complaint. See Pittman v. Moore, 980 F.2d 994, 995 (5th Cir. 1993). Thus, the district court did not abuse its discretion by dismissing the complaint. Denton v. Hernandez, 504 U.S. 25, 33 (1992).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Harris's appeal is without arguable merit and is therefore frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. 5th Cir. R. 42.2.

The district court's dismissal of the complaint as malicious and this court's dismissal of this appeal as frivolous count as two strikes for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). We caution Harris that once he accumulates three strikes, 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 28 U.S.C. § 1915(g).

APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED.