

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20601
Conference Calendar

RICHARD KENT MILLER,

Petitioner-Appellant,

versus

JOHNNY M. THOMAS; JAMES A. SIMPSON; MICHAEL HALL;
KENT RAMSEY,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CV-4004

February 21, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Richard Kent Miller ("Miller"), Texas state prisoner # 637111, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint. Miller asserts that the defendants violated prison policy by not following proper procedure at his disciplinary hearing.

The district court did not err in concluding that Miller's contention that the disciplinary conviction for escape should be expunged from his record was frivolous. See Clarke v. Stalder,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

154 F.3d 186, 189 (5th Cir. 1998)(en banc); see also Edwards v. Balisok, 520 U.S. 641, 648 (1997).

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

Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2. The dismissal of this appeal and the dismissal as frivolous and for failure to state a claim by the district court each count as a "strike" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996).

Miller therefore has two "strikes" under 28 U.S.C. § 1915(g). We caution Miller 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; SANCTIONS WARNING ISSUED.