

August 20, 2003

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 02-41441
Conference Calendar

JOHN A. CROCKETT,

Plaintiff-Appellant,

versus

DAVID W. MCDOWELL, Disciplinary Hearing Officer; JOY A.
EDWARDS, Security Staff, Correctional Officer IV; RAYMOND E.
THOMPSON, Warden, Beto I Unit; TEXAS DEPARTMENT OF CRIMINAL
JUSTICE - INSTITUTIONAL DIVISION,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:02-CV-363

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

John A. Crockett, Texas prisoner #730904, appeals from the district court's dismissal with prejudice of his 42 U.S.C. § 1983 lawsuit as frivolous and for failure to state a claim upon which relief may be granted, pursuant to 28 U.S.C. § 1915A(b)(1).

As Crockett has not shown that his disciplinary conviction has been overturned or otherwise invalidated, he may not maintain his claims for money damages, declaratory relief, or injunctive

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

relief in a 42 U.S.C. § 1983 action. See Edwards v. Balisok, 520 U.S. 641, 648 (1997); Preiser v. Rodriguez, 411 U.S. 475, 488-90 (1973). Accordingly, the district court did not err by dismissing Crockett's lawsuit for failure to state a claim and as frivolous. See Ruiz v. United States, 160 F.3d 273, 275 (5th Cir. 1998); Martin v. Scott, 156 F.3d 578, 580 (5th Cir. 1998).

Crockett's appeal lacks arguable merit; it is DISMISSED AS FRIVOLOUS. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a "strike" for purposes of 28 U.S.C. § 1915(g), as does the dismissal of his 42 U.S.C. § 1983 complaint in district court. See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). If he accumulates three "strikes" under 28 U.S.C. § 1915(g), he will not be able to 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. Id.

APPEAL DISMISSED; THREE-STRIKES WARNING ISSUED.