UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 06-7352

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VICTOR PERKINS,

Plaintiff - Appellant,

versus

WARDEN A. F. BEELER,

Defendant - Appellee.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:06-ct-03060-BO)

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Submitted: October 31, 2006   Decided: December 1, 2006

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Before MICHAEL and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Victor Perkins, Appellant Pro Se. Rudolf A. Renfer, Jr., Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

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PER CURIAM:

Victor Perkins appeals a district court order and judgment summarily dismissing his civil rights complaint under 28 U.S.C. § 1915(g) (2000) because he had three prior actions that were dismissed as frivolous. Dismissal under the three strikes provision of § 1915(g) is reserved for those persons defined as prisoners. Perkins is civilly committed and not considered a prisoner. See 28 U.S.C. § 1915(h) (2000); Michau v. Charleston County, S.C., 434 F.3d 725, 727 (4th Cir.), cert. denied, 126 S. Ct. 2936 (2006).

Despite the fact that the dismissal under § 1915(g) was improper, we affirm on alternate reasoning. See United States v. Smith, 395 F.3d 516, 519 (4th Cir. 2005) (finding that court is not limited to grounds offered by district court for its decision but may affirm on any grounds apparent from the record). Perkins' complaint is clearly frivolous as he failed to state a claim of cruel and unusual punishment or deliberate indifference to medical needs. See 28 U.S.C. § 1915(e)(2)(B)(i), (ii) (2000).

Accordingly, we grant Perkins' motion to proceed in forma pauperis and affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED